



Update on Non-Reporting Public-Private Development Construction Projects

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A Report by the Office of the District of Columbia Auditor
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Office of the District of Columbia Auditor

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The Honorable Phil Mendelson
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, D.C. 20004

Letter Report: Update on Non-Reporting Public-Private Development Construction Projects

Dear Chairman Mendelson:

The Auditor conducted an examination of the compliance of non-reporting public-private developers with the minimum requirements set forth in their Certified Business Enterprise Agreements (CBEAs). The CBEAs were executed by the Department of Small and Local Business Development (DSLBD) with each developer at the outset of each construction project.

Objectives, Scope and Methodology

The objectives of this examination were to:

1. Determine whether non-reporting developers complied with the requirements of CBEAs; and
2. Determine potential penalties for noncompliant developers.

In conducting our examination, we identified 107 public-private developers who did not report meeting their CBE expenditure goal and did not submit quarterly expenditure reports in FY 2012 and FY 2013, as of August 31, 2013. For those 107 projects, we reviewed available CBEAs executed by DSLBD with each developer. We also reviewed the Certificates of Occupancy issued for projects using the District Department of Consumer Affairs' web-based Property Information Verification System.

We did not conduct the examination as an audit as defined by the Government Accountability Office's Government Auditing Standards.

Background

The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (the Act), as amended, states that “it shall be the goal and responsibility of the Department [of Small and Local Business Development] to stimulate and foster the economic growth and development of businesses based in and serving the District of Columbia, particularly certified business enterprises, with the intended goals of:

- (A) Stimulating and expanding the local tax base of the District of Columbia;
- (B) Increasing the number of viable employment opportunities for District residents; and
- (C) Extending economic prosperity to local business owners, their employees, and the communities they serve.”

The Act also tasks DSLBD with providing “advocacy, business development programs, and technical assistance offerings” that will “maximize opportunities for certified business enterprises to participate in:

- (A) The District's contracting and procurement process;
- (B) The District's economic development activities; and
- (C) Federal and private sector business opportunities that occur in the District of Columbia.”

Starting July 1, 2007, DSLBD began executing CBEAs with developers that received financial assistance from the District government. The CBEAs required developers to meet specified CBE expenditure goals, typically about 35 percent of the adjusted project budget¹. The CBEA for each public-private development construction project sets the CBE expenditure goal for the life of that project. Therefore, compliance with CBE goals can only be fully assessed when the project has been completed. Developers are required to submit quarterly CBE expenditure data directly to the Office of the District of Columbia Auditor (ODCA) and DSLBD. In most cases, the project is deemed complete when the developer obtains a Certificate of Occupancy for the property. In other cases, developers were given a specific deadline, such as two years, to meet the CBE expenditure goal.

As of August 31, 2013, there were 107 developers who did not report meeting their CBE expenditure goal and who did not submit expenditure reports in FY 2012 or FY 2013, as of August 31, 2013. Over the past two years, we have made multiple attempts to obtain clarification from DSLBD on the completion status of these 107 construction projects. DSLBD has provided no information. As a result, we used DCRA's Property Information Verification System to determine if Certificates of Occupancy had been issued for each project.

¹ The adjusted project budget represents the total project budget less taxes, fees, utilities, and other costs that cannot reasonably be expected to be expended with CBEs.

Results of the Auditor's Examination

Two Public-Private Developers Did Not Report Meeting CBE Expenditure Goals within the Required Timeframe

As noted previously, several CBEAs, executed between 2007 and 2009, included a requirement that developers meet CBE expenditure goals within a specific timeframe, such as within two years of the agreement date. We found that 2 of the 107 developers that did not submit expenditure reports in FY 2012 or FY 2013, as of August 31, 2013, did not report meeting CBE expenditure goals within the required timeframe. Potential penalties for the two developers could total \$10,451,567. However, it is possible that the developers failed to report legitimate CBE expenditures which, if reported, could reduce or eliminate these penalties.

Figure 1 presents the compliance status of the two developers that did not report meeting CBE expenditure goals within the required timeframe.

Figure 1
Developers That Did Not Report Meeting CBE Expenditure Goals within the Required Timeframe

	Project Title	CBEA Execution Date	CBE Goal	Cumulative Reported Expenditures as of August 31, 2013	% To CBE Goal	Amount of Potential Penalty
1	Kelsey Gardens Property Company, LLC - Addison Square at Kelsey Gardens	12/10/2009	\$17,757,824	\$0	0%	\$4,439,456
2	WestEnd25	9/10/2009	\$24,048,442	\$0	0%	\$6,012,111

Recommendation:

1. The DSLBD Director should request a detailed report of all CBE expenditures from the developers of the two projects that did not submit quarterly reports showing that they met their CBE expenditure goals within the required time frame. If the developers cannot prove that they met their CBE expenditure goal, DSLBD should assess the appropriate penalty.

Eleven Public-Private Developers Obtained Certificates of Occupancy but Did Not Report Meeting CBE Expenditure Goals

Most CBEAs that DSLBD executed since 2009 state that the project is complete when the developer obtains a Certificate of Occupancy for the property. Based on DCRA's Property Information Verification System, we found that 11 of the 107 developers that did not submit expenditure reports in FY 2012 or FY 2013, as of August 31, 2013, obtained Certificates of Occupancy for their projects. Based on the CBE expenditure data submitted by the developers prior to FY 2012, none of the 11 developers met their CBE expenditure goals. Potential penalties for the 11 developers could total \$4,087,509. However, it is possible that the developers failed to report legitimate CBE expenditures which, if reported, could reduce or eliminate these penalties.

Figure 2 presents the compliance status of the 11 developers that obtained Certificates of Occupancy but did not report meeting CBE expenditure goals.

Figure 2
Developers That Obtained Certificates of Occupancy but Did Not Report Meeting CBE Expenditure Goals

	Project Title	CBEA Execution Date	CBE Goal	Cumulative Reported Expenditures as of August 31, 2013	% To CBE Goal	Amount of Potential Penalty
1	100 Bryant St, NW	4/20/2009	\$36,190	\$0	0%	\$36,190
2	35 Forrester Street, SW- Jones Electric Company, Inc.	2/29/2012	\$18,620	\$0	0%	\$4,655
3	5019 H Street SE	5/24/2012	\$40,600	\$0	0%	\$10,150
4	910-912 S Street NW	5/3/2012	\$395,521	\$0	0%	\$98,880
5	Bruke G. Siraga and Genet H. Mamo - 3620 Rock Creek	7/27/2009	\$83,803	\$0	0%	\$20,951
6	Cesar Chavez - PCS -Public Charter Schools for Public Policy	1/9/2008	\$2,703,610	\$865,225	32%	\$675,903
7	Franklin Parking Lot projects	7/13/2009	\$117,424	\$0	0%	\$29,356
8	Howard Theatre Development Group, LLC (Restoration)	5/23/2008	\$5,917,749	\$2,378,560	40%	\$1,479,437
9	Old Naval Hospital Foundation	7/1/2010	\$2,969,050	\$2,881,583	97%	\$31,450
10	Reyes LLC - 2305 1st Street	7/7/2009	\$41,983	\$0	0%	\$10,496

	Project Title	CBEA Execution Date	CBE Goal	Cumulative Reported Expenditures as of August 31, 2013	% To CBE Goal	Amount of Potential Penalty
11	The Nannie Helen at 4800 - A Wash and Associates, Inc.	5/25/2010	\$6,760,167	\$0	0%	\$1,690,042

Recommendation:

2. The DSLBD Director should request a detailed report of all CBE expenditures from the developers of the 11 projects that obtained Certificates of Occupancy but did not submit quarterly reports showing that they met their CBE expenditure goals. If the developers cannot prove that they met their CBE expenditure goal, DSLBD should assess the appropriate penalty.

Conclusion

We found that 2 of the 107 developers that did not submit expenditure reports in FY 2012 or FY 2013, as of August 31, 2013, did not report meeting CBE expenditure goals within the required timeframe. We also found that 11 of the 107 developers that did not submit expenditure reports in FY 2012 or FY 2013, as of August 31, 2013, obtained Certificates of Occupancy for their projects. Based on the CBE expenditure data submitted by the developers, none of the 13 developers met their CBE expenditure goals. Potential penalties for the 13 developers could total \$14,539,076.

Given the significant economic benefits to the District resulting from developers' compliance with CBE expenditure goals, we urge DSLBD to continue to improve the oversight of CBE participation in public-private development construction projects. We will continue to monitor the implementation and maintenance of our recommendations to ensure that DSLBD's efforts facilitate meeting the goals of the Act.

Sincerely,


for: Yolanda Branche
District of Columbia Auditor