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**Eastern Market Management and Oversight
Continues to Need Substantial Improvement**

September 30, 2008

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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Section 455 (b) of Public Law 93-198¹ and D.C. Code § 37-103(c),² the District of Columbia Auditor (Auditor) conducted an audit of the Eastern Market Enterprise Fund (Fund), and the operation of the Eastern Market Manager.

CONCLUSION

The Auditor found that management of the Office of Property Management (OPM) responsible for the oversight of the Market manager, Eastern Market Ventures, Inc, (EMV) ineffectively managed and administered the Market Management Agreement. The Auditor found that OPM management consistently failed to establish an effective process to monitor and evaluate EMV's performance and establish an effective system of financial and management accountability for Eastern Market finances and operations. Further, OPM management did not ensure that EMV complied with the terms and conditions of the Market Management Agreement before EMV paid itself monthly management fees. OPM management's failure to adequately monitor EMV's management of Eastern Market operations fostered a lack of compliance with provisions of the Agreement and a total lack of financial and management accountability.

The Auditor also found that EMV failed to comply with all terms and conditions of the Lease and Property Agreement and the Eastern Market law. D.C. Code § 37-106 (a) states that tenants shall not occupy any space or stand inside the Market building without first having entered into a written contract with the market manager. Further, EMV's lease and property agreement with the District stipulated that EMV was to enter into written use agreements, approved by the District, with Farmer's Line vendors. However, for almost the entire six year audit period (January 1, 2002 through December 1, 2007), EMV had not entered into written contracts with all interior tenants and

¹See 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. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices."

²See D.C. Code § 37-103 (c) which states: "All Eastern Market accounts shall be independently audited biennially by the District of Columbia Auditor, and the audit shall be submitted to the Mayor and the Council."

farmers. EMV also failed to comply with the lease and property management agreement by not maintaining its corporate status in good standing.

Finally, EMV made payments to individuals and vendors without valid contracts which set forth the basic essential terms and conditions. Further, OPM management made payments to a corporation affiliated with one of EMV's officers for construction management services without a valid written contract.

MAJOR FINDINGS

1. Accountable OPM officials failed to effectively manage the market manager agreement and failed to adequately supervise the Market Manager.
2. EMV did not enter into written and signed contracts with all interior tenants as required by law.³
3. In violation of its agreement with the District, EMV failed to secure prior written approval for subcontracts totaling approximately \$355,473.
4. EMV made payments totaling approximately \$126,000 from FY 2002 to FY 2007 in the absence of a valid executed contract that set forth the scope of services and the rate of pay.
5. EMV's required liability insurance coverage for off-duty police officers providing parking enforcement/security services at the market did not meet the District's requirement under the agreement.
6. EMV did not comply with applicable District laws and its District corporate charter was revoked.
7. EMV made only one required deposit to the Eastern Market Enterprise Fund (fund) after becoming the market manager. The Agreement was unclear regarding deposits.
8. EMV paid CPL approximately \$36,000 in addition to monthly payments under a cleaning and maintenance contract.

³The Auditor notes that in August 2007 (after the fire at the Market) interior tenants signed sublease agreements prior to moving into the East Hall Building. However, these agreements expired in June 2008.

9. New CPL contract required CPL to perform fewer duties at a higher contract amount.
10. Market Manager permitted inadequate internal controls over the collection of fees from vendors on the Farmer's Line.
11. Accountable OPM officials did not establish an effective review process for expenditures from market revenue and some receipts presented for reimbursement did not provide adequate justification.
12. Accountable OPM officials failed to conduct biennial assessments of EMV's performance.
13. Accountable OPM officials made payments to a corporation affiliated with one of EMV's officers for construction management services provided without a written contract.
14. Eastern Market needed extensive rehabilitation, restoration and reconstruction prior to April 2007 fire.
15. Market Five Gallery (MFG) has not submitted required documents to EMV and the District.

MAJOR RECOMMENDATIONS

1. Accountable OPM officials must immediately establish an effective system of financial and management accountability with regard to the operation of Eastern Market and regularly evaluate the Market Manager's performance to ensure timely compliance with the Agreement prior to paying the fee for managing the Market.
2. Accountable OPM officials should revise the Market Manager Agreement to remove the provision which allows the Market Manager to pay itself its fees. Instead, a process should be established in which the OPM pays the Market Manager after the Market Manager satisfactorily documents and supports all revenues and expenditures, contracts, leases, and sub-leases, and that services have been adequately performed pursuant to the contract.
3. OPM must define "uniform processing fee" and, if necessary, establish the amount.

4. EMV and tenants must immediately comply with D.C. Code § 37-106 (a) by executing written contracts to lease or sublease any space or stand inside the Market building. The contracts must specify items the tenants may sell at the Market and must also require that each tenant pay the required uniform processing fee; possess the required liability insurance, business license, and sales and use tax certificate number; and comply with applicable laws, regulations and rules governing the Market.
5. EMV (or the market manager) and all vendors on the Farmer's Line must immediately establish and execute written use agreements.
6. Tenants/vendors must immediately establish sales and use tax accounts, file sales and use tax returns, and pay all delinquent sales and use taxes to the District government. Failure to do so promptly must result in the immediate loss of their privilege to conduct business at Eastern Market.
7. EMV (or the Market Manager) must immediately review its liability insurance coverage to ensure that coverage is adequate and meets the District's requirement for each off-duty MPD police officer that is hired to work at the Market. Proof of insurance must be provided to OPM and MPD's Chief of Police annually.
8. MPD officials must monitor all entities that hire off-duty MPD police officers to ensure that the entities purchase required liability insurance. MPD officials must also ensure that they annually receive a copy of the insurance policy, as proof of coverage and that the District has been named as an additional insured on the policy.
9. EMV officials (or the Market Manager) should execute valid contracts for all vendors when procuring goods and services
10. EMV (or the Market Manager) must require all vendors to include a statement reflecting the services they actually provided when submitting invoices. Further, EMV(or the Market Manager) must document the services of its on-site personnel provided for the Market versus the services provided exclusively for EMV. The cost of services provided exclusively for the Market Manager must be paid from the Market Manager's fee and not the Market's operating account.

11. The District's OPM Director should immediately terminate EMV as Market Manager.
12. EMV must immediately take the necessary actions to have its corporate status reinstated and comply with Section 20(b) of the Agreement and D.C. Code, Section 29.301.83 (a-1).
13. Accountable OPM officials must ensure that EMV promptly seek reinstatement of its corporate status. Further, OPM must obtain proof that EMV has filed all reports necessary to maintain its corporate status in good standing in the District.
14. EMV (or the Market Manager) must make quarterly deposits to the Fund of all Market revenue exceeding \$20,000 as required by Section 5 of the Agreement and Accountable OPM officials must monitor, review, and verify the accuracy of financial reports submitted by EMV or the Market Manager to ensure that the appropriate deposits are made to the Eastern Market Enterprise Fund.
15. Accountable OPM officials should require EMV (or the Market Manager) to submit copies of the back and front of canceled checks in addition to the monthly financial reports and copies of the monthly bank statement for the Market operating account.
16. Accountable OPM officials must immediately specify, in writing, whether the Market Manager should deposit *all* revenue in excess of \$20,000 *before* deduction of Market operating expenses or *after* expenses are deducted.
17. During months when revenues collected are not sufficient to cover operating expenses, the Market Manager must request funds from the District to cover these expenses as required by the Agreement.
18. Accountable OPM officials must develop future Market Manager Agreements that contain provisions that are clear and specific regarding the Market Manager's responsibility to deposit revenue to the Fund and properly document and account for all Market revenue collected and all expenditures of Market revenue.
19. EMV refrain from making additional payments to CPL for services already covered by existing contractual terms/provisions.

20. OPM periodically inspect the Market to ensure that the Market is properly cleaned and maintained and that necessary repairs are made timely by the Market Manger.
21. EMV (or the Market Manager) must segregate functions related to collection of fees from the Farmer's Line. One individual should create a written record of the number of vendors on the farmer's line and the number of stalls, tables, or tents used by each vendor while another individual should verify the count and collect the fees from each vendor.
22. OPM must monitor EMV's collection of fees from the Farmer's Line and periodically independently verify that the reported number of vendors and amounts collected are accurate.
23. Accountable OPM officials establish an effective review process to ensure that expenditures from Market revenue are reasonable and related to Market operations and that personal expenses of the Market Manager are paid only from the Market Manager's fee.
24. Accountable OPM officials require EMV to promptly reimburse the Fund at least \$11,600 for amounts improperly disbursed from Market revenue for non-market related expenses.
25. The President and Vice President/Treasurer of EMV provide the necessary justification and documentation to support reimbursement requests from Market revenue.
26. Accountable OPM officials must immediately conduct the required performance review of EMV and provide the results of this review to the Auditor within 60 days of the date of the report. Accountable OPM officials must ensure that in the future the required biennial review is timely conducted.
27. Accountable OPM officials must comply with the District's ethical standards and procurement regulations when awarding contracts.
28. The Office of the Inspector General investigate the award of this oral contract by OPM management to Site Construction Inc., its relationship to EMV, and payments made to it by EMV officials.

29. MFG must immediately submit the documents required by its sublease to the Market Manager.
30. Accountable OPM officials and the Market Manager must ensure that required documents are received and reviewed when they are due or hold MFG liable for failing to meet the terms of their sublease agreement.
31. For future sublease agreements, the Market Manager must include penalty clauses for failure to voluntarily provide required documents or comply with any term of the agreement.

PURPOSE

Pursuant to Section 455 (b) of Public Law 93-198⁴ and D.C. Code § 37-103(c),⁵ the District of Columbia Auditor (Auditor) conducted an audit of the Eastern Market Enterprise Fund (Fund), and the operation of the Eastern Market Manager.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to determine whether:

1. the Fund had been established as required by D.C. Code § 37-103 (a) and (b);
2. all revenues collected or received by the Chief Property Management Officer of the District of Columbia, (CPMO), on behalf of Eastern Market (Market), were deposited into the Fund;
3. expenses paid from the Fund were properly recorded and handled in compliance with D.C. Code §37-103 (b);
4. policies, procedures, rules and regulations had been established to govern financial operations related to the Fund, the collection and deposit of revenue, and payment of expenses from the Fund;
5. the Market Manager complied with terms and conditions of the Lease and Property Management Agreement with the District;⁶

⁴See 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. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.”

⁵See D.C. Code § 37-103 (c) which states: “All Eastern Market accounts shall be independently audited biennially by the District of Columbia Auditor, and the audit shall be submitted to the Mayor and the Council.”

⁶See District of Columbia Office of Property Management Lease and Property Management Agreement dated December 21, 2001 and subsequent amendments and extensions between the District of Columbia and Eastern Market Venture, Inc.

6. internal controls over the Market Manager and the Fund's financial operations were sufficient to safeguard Market assets and resources; and
7. recommendations made in the Auditor's July 16, 2002 report entitled, "Eastern Market Management and Oversight Needs Substantial Improvement," were implemented.⁷

The audit covered the period January 1, 2002 through December 31, 2007.

To accomplish the audit objectives, the Auditor reviewed: (1) D.C. Law 12-228, D.C. Code §§ 37-101 through 37-113⁸; and (2) relevant documents and records obtained from the Office of Property Management (OPM), the Office of Finance and Resource Management (OFRM), the Department of Consumer and Regulatory Affairs (DCRA), the Office of the Chief Financial Officer's Office of Financial Operations and Systems (OFOS) and Office of Finance and Treasury (OFT), Eastern Market Venture, Inc. (EMV) and Market Five Gallery, Inc. (MFG). The Auditor also interviewed key officials in OPM, OFRM, DCRA, OFOS, OFT, EMV, and MFG.

We conducted this performance audit 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.

BACKGROUND

Designated on the National Register as a historic building, Eastern Market is located within the Capitol Hill Historic District of Washington, D.C. and is owned by the District of Columbia Government. The Market was the first city-owned Market to be built as part of a city-wide public

⁷See District of Columbia Auditor's report, "Eastern Market Management and Oversight Needs Substantial Improvement" issued July 16, 2002.

⁸See the "Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998, effective April 16, 1999, (D.C. Law 12-228; D.C. Code §§ 37-101 through 37-113).

market system. Presently, it is divided into three sections, the South, North, and Center Halls.⁹ The South Hall contains an eatery and vendors selling meat, poultry, seafood, delicatessen items, baked goods, and dairy products. The North Hall serves as a venue for community and arts-related activities, and the Center Hall serves as a pottery studio. The front exterior perimeter of the Market serves as a Farmer's Line to provide opportunities for vendors to sell produce.¹⁰

The Fund, created pursuant to D.C. Law 12-228, was established for the deposit of monies collected or received by the District's CPMO on behalf of the Market to pay expenses related to the management and maintenance of the Market. The CPMO selected EMV as the Market Manager responsible for the collection of all rents, fees, and other revenue from Market operations and for the payment of all Market expenses.¹¹ On a quarterly basis, EMV was to deposit all Market revenue in excess of \$20,000 into the Fund.

EMV's responsibilities as Market Manager were set forth in a "Lease and Property Management Agreement" (Agreement) executed on December 21, 2001, between the District government and EMV.¹² The Agreement provided that EMV would receive a market manager fee of \$8,000 monthly, or \$96,000 annually, to manage the Market.¹³ A January 2003 amendment and extension of the lease and property management agreement increased the annual fee by 3% (resulting

⁹This relates to the status of the Market prior to the fire in April 2007. See later discussion regarding the status of the Market after the fire.

¹⁰Vendors who sell crafts in this area on Sundays are not part of the Farmer's Line. Instead, they lease space from the North Hall tenant, MFG.

¹¹See D.C. Code §§ 37-102 and 37-105: The OPM shall supervise and provide coordinated management of all operations in the Eastern Market Square including the selection of a not-for-profit association or corporation to manage and operate the Eastern Market Square on a self-sustaining basis as the Market Manager.

¹²The Agreement has been amended three times since it was executed on December 21, 2001. The first amendment and extension of the Agreement was executed on January 1, 2003, the second was executed on May 1, 2004 and the third was effective August 6, 2007. The current amended Agreement terminates June 30, 2008. However, the District "shall have the right to extend the lease under the then existing terms for an additional six (6) months commencing July 1, 2008 and terminating December 31, 2008 by giving EMV sixty (60) days written notice prior to expiration of the Term."

¹³The premises is described as: located on Lot 800 in Square 800 in the District of Columbia, with a street address of 225 7th Street, S.E., Washington, D.C. 20009, (the "Building"). The premises consists of the South Hall and the second floor Pottery Area of the Building, the rear drive alley behind the Building, and on Mondays through Saturdays, that part of the exterior plaza of Eastern market occupied by the Farmers Shed and on Sundays all of the plaza occupied by authorized farm vendors. The lease agreement granted EMV the exclusive right to use the Premises but specifically excluded the following areas: the North Hall, and on Mondays through Saturdays, that part of the exterior plaza of the Market north and east of the North Hall that is not otherwise occupied by the Farmer's Shed (Farmer's Line), and on Sundays all of the Plaza not occupied by authorized farm vendors.

in a monthly payment of \$8,240 in year three, \$8,487 in year four, and \$8,741.82 in year five of the lease period). A May 2004 amendment and extension of the lease and property management agreement provided for an additional \$1,500 monthly payment to EMV for management of the North Hall, the North Plaza, and the East Wall which were not included in the original agreement.¹⁴ In August 2007, a third amendment and extension increased the Market manager's fee to \$18,714.15 per month and included additional duties and responsibilities for EMV.

Eastern Market Fire

According to the August 2007 third amendment and extension of the Lease and Property Management Agreement, on or about April 30, 2007 a fire caused significant damage to the southern portions of the Eastern Market building, resulting in the displacement of all interior merchants in the South Hall and causing the District to erect a temporary structure (the "East Hall") to house the displaced South Hall interior market.

As a result of the fire, OPM awarded contracts which modified the pre-fire renovation efforts and awarded contracts for additional services. Contracts awarded included the following: (1) clean-up work, including asbestos abatement after the fire, awarded to Minkoff Construction; (2) design and construction of a temporary market to house vendors displaced by the fire, awarded by the District Department of Transportation (DDOT) to Turner Construction; and (3) post fire design work including new roof and cornice design for the South Hall, awarded to Quinn Evans and Associates.

Pursuant to the original agreement, EMV was responsible for the management of all subleases of the Market including the collection of all rents, and the monitoring and enforcement of sublease terms. EMV was to deposit all rents, revenues, and fees it collected from the operation of the Market into EMV's Market account which was located at Provident Bank. The Agreement specifies that EMV shall pay the following operating expenses from Market revenue: (1) all utilities; (2) the market manager fee; (3) all routine repair and maintenance expenses; (4) insurance costs; and (5) all other operating expenses deemed advisable by EMV in its reasonable discretion including, but not limited to, cleaning and on-site personnel, trash removal cost, security and supplies.¹⁵

¹⁴The May 2004 amendment indicated that the \$1,500 monthly payment to EMV would be increased by 3% annually on the anniversary of the commencement date of the May 2004 amendment.

¹⁵See Section 5, "Use of Premises and Management Responsibilities" of the Agreement dated December 21, 2001.

Revenues collected by EMV on behalf of the Market included rents from subleases and tenants of the Center, North, and South Halls, and vendors on the Farmer's Line.¹⁶ Additionally, the Market received a \$450 monthly fee from National Capital Bank for the privilege of placing an ATM at the Market.

According to EMV's operating statements, EMV's expenses were primarily for the market manager fee, and payment to contractors for interior and exterior cleaning, repairs and maintenance to the Market, parking enforcement, trash removal and snow removal. (EMV Operating Statements are presented in Appendix I.)

¹⁶Prior to the fire, there were 13 vendors currently residing in the South Hall and one vendor, Eastern Market Pottery, in the Center Hall. The monthly rental charges are calculated based on the square footage of space being used. Monthly rents range from \$672 for 320 sq. ft. to \$3,123 for 1,687 sq. ft. The lessee currently pays \$2,300 a month for the entire North Hall. The North Hall is separated into three sections: the main hall which rents for \$2,000/month and two smaller halls renting at \$100 and \$200 monthly. Vendors under the shed area pay \$9 for a half bay and \$18 for a full bay. A full bay is an 18 ft. by 72 ft area of space that holds up to six tables. Vendors not under the shed but that are located in tents pay \$30-\$40/day. Revenues collected from the weekend vendors are usually consistent during the "seasonal period" which runs from April-November annually.

FINDINGS

ACCOUNTABLE OPM OFFICIALS FAILED TO EFFECTIVELY MANAGE THE MARKET MANAGER AGREEMENT AND FAILED TO ADEQUATELY SUPERVISE THE MARKET MANAGER

According to D.C. Code, Section 37-102, the Office of Property Management (OPM) was to supervise and provide coordinated management over all operations in the Eastern Market Square.¹⁷ The Auditor found that OPM management did not properly supervise EMV to ensure compliance with the Agreement. Further, the Auditor found that OPM management ineffectively managed and administered the Market Management Agreement.

The Auditor found that accountable OPM officials consistently failed to establish an effective process to monitor and evaluate EMV's performance and establish an effective system of financial and management accountability for Eastern Market finances and operations. Further, accountable OPM officials did not ensure that EMV complied with the terms and conditions of the Market Management Agreement before EMV paid itself monthly management fees. The Agreement provided that EMV was to collect all rents due and to pay Market operating expenses, including paying itself its Market Manager Fee from the rents and other fees it collected. The flawed system of financial and management accountability established under the Agreement permitted EMV to deduct its fees directly from Market revenue in an environment where the responsible government official was inattentive, ineffective, and indifferent to the quality of the Market Manager's performance and conditions at the Market. Further, the Agreement did not require OPM management to review EMV's performance before EMV paid itself its monthly fees.

The Auditor found that OPM's failure to adequately monitor EMV's management of Eastern Market operations fostered a lack of compliance with provisions of the Agreement and a total lack of financial and management accountability.

¹⁷The Lease and Property Management Agreement was signed, on the District's behalf, by the then Director of OPM. The First and Second Amendment and Extension were both signed, on the District's behalf, by the then Chief Property Management Officer.

RECOMMENDATIONS

1. OPM management must immediately establish an effective system of financial and management accountability with regard to the operation of Eastern Market and regularly evaluate the Market Manager's performance to ensure timely compliance with the Agreement prior to paying the fee for managing the Market.
2. OPM management should revise the Agreement to remove the provision which allows the Market Manager to pay itself its fees. Instead, a process should be established in which OPM pays the Market Manager after the Market Manager satisfactorily documents and supports all revenues and expenditures, contracts, leases, and sub-leases, and that services have been adequately performed pursuant to the contract.

EMV FAILED TO COMPLY WITH ALL TERMS AND CONDITIONS OF THE LEASE AND PROPERTY AGREEMENT AND THE EASTERN MARKET LAW

The District's lease and property Agreement with EMV and D.C. Code §§ 37-101 through 37-113, contained terms and conditions for EMV's lease of the Market, its management responsibilities and other requirements. The Auditor found instances in which EMV failed to comply with the Agreement and applicable sections of the D.C. Code and the laxity of responsible OPM personnel facilitated EMV's noncompliance.

EMV Did Not Enter into Written Contracts with All Interior Tenants as Required by Law and Tenants Were Not in Compliance with Critical Legal Requirements¹⁸

D.C. Code § 37-106 (a) states that tenants shall not occupy any space or stand inside the Market building without first having entered into a written contract with the market manager. Further, the Agreement between the District and EMV stipulated that EMV was to enter into written use agreements, approved by the District, with Farmer's Line vendors. The Auditor found, however, that EMV had not entered into written contracts with vendors occupying space in the South Hall and Eastern Market Pottery. Further, EMV had not entered into use agreements with all vendors on the Farmer's Line. However, the Auditor found that EMV collected rent from all the vendors during the audit period.

¹⁸The Auditor notes that in August 2007 (after the fire at the Market) interior tenants signed sublease agreements prior to moving into the East Hall Building. However, these agreements expired in June 2008 and have not been renewed.

The agreements should have been established to ensure that interior tenants in the South Hall and vendors on the Farmer's Line were fully aware of the amount they were obligated to pay and the terms and conditions for their use of Market space, the applicable laws and regulations to which they were to adhere, and the type of items they could sell. Also, at a minimum, these agreements would constitute a written record of financial accountability between EMV and the District government.

District of Columbia Code, Section 37-106 (c) states, in relevant part, the following:

Tenants may not sell food prepared for immediate consumption on the premises unless specifically authorized by the tenant's written contract.

The Auditor found that at least two vendors sold food prepared for immediate consumption without specific authorization because EMV failed to enter into written tenant contracts with these vendors.

The Auditor also found that EMV officials had not established any procedures to ensure that vendors adhered to applicable District laws, possessed the required insurance and business licenses, obtained sales and use tax numbers, and paid the market manager a uniform processing fee. Neither EMV nor accountable OPM officials could provide an explanation of the "uniform processing fee" or amount of the fee that vendors were required to pay the Market Manager. The Auditor could not find a definition of the uniform processing fee, its purpose, or intended use in the Agreement or applicable District law.

Every vendor in the District selling certain tangible personal property at retail and selling certain selected services, defined as selling at retail, is required to do the following:¹⁹ (1) file an

¹⁹See D.C. Code, Section 47-2001 (n)(1) which states the following: "Retail sale" and "sale at retail" means the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but not be limited to, the following:

- (A)(i) Sales of food or drink prepared for immediate consumption as defined in subsection (g-1) of this section; and
- (ii) Sales of food or drink when sold from vending machines.

application for a certificate of registration;²⁰ (2) pay a tax on the entire gross receipts from taxable sales (vendors collect the tax from the purchaser at the time of making a sale);²¹ and (3) file a periodic return either monthly or annually depending on the amount of sales tax due.²²

The Auditor found that, as of August 2007, five of the 13 market vendors had not registered for sales and use tax certificates with the District's Office of Tax and Revenue.

RECOMMENDATIONS

1. OPM must define "uniform processing fee" and, if necessary, establish the amount.
2. EMV and tenants must immediately comply with D.C. Code § 37-106 (a) by executing written contracts to lease or sublease any space or stand inside the Market building. The contracts must specify items the tenants may sell at the Market and must also require that each tenant pay the required uniform processing fee; possess the required liability insurance, business license, and sales and use tax certificate number; and comply with applicable laws, regulations and rules governing the Market.
3. EMV (or the market manager) and all vendors on the Farmer's Line must immediately establish and execute written use agreements.
4. Tenants/vendors must immediately establish sales and use tax accounts, file sales and use tax returns, and pay all delinquent sales and use taxes to the District government. Failure to do so promptly must result in the immediate loss of their privilege to conduct business at Eastern Market.

²⁰See D.C. Code, Section 47-2026 and 9 DCMR §415.1 (1998).

²¹See D.C. Code, Section 47-2202 and 9 DCMR §400.1 and 412 (1998).

²²See D.C. Code, Section 47-2211 and 9 DCMR §420 (1998).

In Violation of the Agreement with the District, EMV Failed to Secure Prior Written Approval for Subcontracts Totaling Approximately \$355,473

Section 6 of the Agreement²³ states, in relevant part, that EMV shall not enter into any subcontract with an aggregate value greater than \$25,000 without the prior written approval of the District.

The Auditor found that, in violation of section 6 of the Agreement, EMV awarded two subcontracts each with an aggregate value greater than \$25,000 without obtaining the District's prior approval. Table I presents the two subcontractors paid an aggregate of \$355,473 under subcontracts that exceeded \$25,000 without the prior written approval of the District.

TABLE I
Goods and Services With Aggregate Value in Excess of \$25,000 Procured
Without Obtaining Prior Written Approval From the District
January 2002 Through December 2007

Contractor	Purpose	2002	2003	2004	2005	2006	2007	Aggregate Value
CPL Company (CPL)	Cleaning Contract	\$55,672	\$53,532	\$49,036	\$61,158	\$53,790	\$18,295	\$291,483 ²⁴
Sun Ventures	Repairs	48,175	15,815	-0-	-0-	-0-	-0-	63,990
Total		\$103,847	\$69,347	\$49,036	\$61,158	\$53,790	\$18,295	\$355,473

Source: EMV paid invoice register and check detail

As a result of EMV's failure to obtain the District's prior written approval, District officials did not adequately review the services to be rendered by these subcontractors or the reasonableness of the costs and necessity of the services before the contracts were awarded.

Further, accountable OPM officials did not establish a process to ensure that the contractors adequately performed the services for which they were paid and did not require EMV to periodically report on contractors' performance. Thus, OPM could not be assured that the contractors actually performed services for which they were paid.

²³See section 6 of the Agreement which states the following: "EMV shall not enter into any subcontract with an aggregate value greater than \$25,000 without the prior written approval of the District."

²⁴This represents the amounts paid to CPL prior to OPM's approval.

EMV Made Payments Totaling Approximately \$126,000 from FY 2002 to FY 2007 in the Absence of a Valid Executed Contract That Set Forth the Scope of Services and the Rate of Pay

The Auditor found that, during the audit period, EMV paid approximately \$100,000 to a Metropolitan Police Officer (MPO) without a valid executed contract, and paid approximately \$26,000 to another vendor, reportedly to collect the Farmer's fees and to provide parking enforcement. According to an EMV representative, the MPO also performed "parking enforcement" for the Market. The MPO and the vendor provided services without a contract. Therefore, the Auditor was not able to determine the agreed upon scope of services or the rate of pay. According to a review of invoices submitted by the MPO, he provided parking security primarily on Saturdays and Sundays at the rate of \$40.50 per hours. The MPO also received a weekly "administrative fee" of \$40.50. The EMV representative could not explain why the administrative fee was paid or how the amount was determined.

The second vendor, who was paid at the rate of \$30 per hour, submitted invoices indicating hours worked but did not indicate the services he provided. The Auditor found that this vendor was the same individual designated to serve as EMV's on-site personnel. According to section 6 of the First Amendment and Extension and Section 11 of the Third Amendment and Extension, the cost of on-site personnel provided by EMV was to be paid from EMV's market manager fee. However, the Auditor found that, in some instances, the entire invoiced amount was paid from Eastern Market's operating account. In other instances, a portion of the invoice was paid from the Market's operating account and a portion was paid from EMV's account. However, EMV could not adequately document what, if any, services the vendor provided on behalf of the Market versus services he provided exclusively to EMV.

In the absence of contracts detailing the scope of services and contract price for both vendors, and invoices from the second vendor not reflecting the services rendered, the Auditor could not determine whether the services rendered and the rates paid were valid expenditures from the Market's operating account.

In comments to the Auditor's draft report, EMV references the Auditor's discussion of a written agreement signed by an EMV representative, dated June 19, 2003. The June 19, 2003 document was NOT a contract between EMV and the police officer performing the security services.

Rather, the June 19, 2003 document represented the Metropolitan Police Department's (MPD) approval for the officer to engage in police-related outside work. Therefore, EMV should have executed a separate contract directly with the police officer, at a minimum, setting forth the scope of services and rate of pay.

EMV's Liability Insurance Coverage for Off-Duty Police Officers Providing Parking Enforcement/Security Services at the Market Did Not Meet the District's Requirement Under the Agreement

EMV's agreement²⁵ with the Metropolitan Police Department (MPD) to employ off-duty MPD officers required EMV to obtain and maintain liability insurance of no less than \$100,000 and to name the District of Columbia Government as an additional insured on the policy. Further, proof of insurance coverage was to be furnished to the Chief of Police. EMV's liability insurance names the District Government as an additional insured but specifically excludes coverage for cases involving assault, battery and the use of a firearm. According to MPD, the off-duty officer was approved for employment as a "uniformed security" personnel at Eastern Market and thus was required by MPD regulations to be in full uniform which includes carrying his service weapon. However, since EMV's liability insurance coverage excludes cases involving the use of handguns, EMV's liability insurance may not be adequate in the event the District is sued as a result of the officer's use of his handgun while performing services for EMV.

RECOMMENDATIONS

1. EMV (or the Market Manager) must immediately review its liability insurance coverage to ensure that coverage is adequate and meets the District's requirement for each off-duty MPD police officer that is hired to work at the Market. Proof of insurance must be provided to OPM and MPD's Chief of Police annually.
2. MPD officials must monitor all entities that hire off-duty MPD police officers to ensure that the entities purchase required liability insurance and that the coverage is adequate. MPD officials must also ensure that they annually receive a copy of the insurance policy, as proof of coverage and that the District has been named as an additional insured on the policy.

²⁵See section II, Notice to Potential Employer, of Employer's Agreement to Conditions of Employment signed by a representative of EMV on June 19, 2003.

3. EMV officials (or the Market Manager) should execute valid contracts for all vendors when procuring goods and services
4. EMV (or the Market Manager) must require all vendors to include a statement reflecting the services they actually provided when submitting invoices. Further, EMV(or the Market Manager) must document the services of its on-site personnel provided for the Market versus the services provided exclusively for EMV. The cost of services provided exclusively for the Market Manager must be paid from the Market Manager's fee and not the Market's operating account.

EMV Did Not Comply with Applicable District Laws and its District Corporate Charter Was Revoked

Section 20(b) of the Agreement states, in relevant part, the following:

EMV shall for the term of this Agreement, remain a nonprofit corporation in compliance with all Applicable Laws, and in the event that EMV does not maintain such status in good standing, the District may terminate this Agreement if EMV does not cure such non-compliance upon thirty (30) days notice from the District to EMV, or such additional time as may reasonably be required, provided EMV is diligently pursuing efforts to cure.

Further, pursuant to D.C. Code, Section 29-301.83(a-1),²⁶ as a non-profit entity incorporated in the District of Columbia, EMV was required to prepare and submit a report to the Corporations Division of DCRA on or before January 15th of the year after its incorporation, and on or before January 15th of each 2nd year thereafter. According to D.C. Code, Section 29-301.91, each corporation that fails or refuses to file its 2-year report within the time prescribed shall be subject to a penalty of \$40 to be assessed by the Mayor.

According to DCRA's Corporation Division, EMV was incorporated in the District of Columbia as a nonprofit corporation in March 2001. EMV filed its 2002 report but failed to file the biennial report with DCRA by January 15, 2004. As a result of EMV's failure to file, DCRA

²⁶See D.C. Code, § 29-301.83 (a-1) which states the following: Each domestic corporation incorporated after December 31, 1997, and each foreign corporation authorized to conduct affairs in the District after December 31, 1997, shall prepare and submit on or before January 15th of the year after its incorporation or the year after such authorization, as the case may be, as well as on or before January 15th of each 2nd year thereafter, a report setting forth the information specified in subsection (a) of this section.

revoked EMV's corporate charter as of September 13, 2004. The Auditor also found that EMV had not filed its 2006 biennial report and its charter continued to be revoked. On October 29, 2007, the Corporations Division of DCRA issued EMV a Certificate of Reinstatement indicating that EMV had complied with all applicable provisions of the District of Columbia Non-Profit Corporation Act. However, EMV failed to file its two year report due on January 15, 2008 and its corporate status was again revoked. Therefore, as of the date of this audit report, EMV's corporate status has been revoked for its failure to file the required two year report which was due January 15, 2008.

EMV's failure to maintain its corporate status in good standing and file reports required by District law violated its Agreement with the District. However, accountable OPM managers and personnel have failed to hold EMV accountable for its non-compliance with the Agreement and applicable District laws.

RECOMMENDATIONS

1. The District's OPM Director should immediately terminate EMV as Market Manager.
2. EMV must immediately take the necessary actions to have its corporate status reinstated and comply with Section 20(b) of the Agreement and D.C. Code, Section 29.301.83 (a-1).
3. OPM management must ensure that EMV promptly seek reinstatement of its corporate status. Further, OPM must obtain proof that EMV has filed all reports necessary to maintain its corporate status in good standing in the District.

EMV Made Only One Required Deposit to the Eastern Market Enterprise Fund (Fund) After Becoming the Market Manager. The Agreement Was Unclear Regarding Deposits

Section 5 of the Agreement poorly states, in relevant part, the following:

On a quarterly basis, EMV shall deposit all Market Revenue in the Eastern Market Account, in excess of twenty thousand (\$20,000) dollars, into the Eastern Market Enterprise Fund ("Fund") that has or will be established by the District pursuant to D.C. Code Section 37-103.²⁷

²⁷ See D.C. Code § 37-103(a) which states the following: There is established the Eastern Market Enterprise Fund ("Fund"), an interest-bearing account, pursuant to 47-373(4)(2)(D). "The Fund shall be operated by the CPMO in accordance with general [sic] accepted accounting principles."

Further, section 8 of the third amendment and extension, effective August 6, 2007, states the following:

As provided in the Lease, on a quarterly basis, EMV shall deposit the balance of the Eastern Market Operating Account, less any reserves deemed advisable by the District in consultation with EMV, in excess of twenty thousand (\$20,000) dollars, if any, into the Eastern Market Enterprise Fund (“Fund”) that has been established by the District pursuant to D.C. Code §37-103.

The Auditor found that pursuant to Section 5 of the Agreement, EMV did not transfer *all* market revenue in the Market operating account (which EMV maintained and controlled), in excess of \$20,000, to the Eastern Market Enterprise Fund (established and controlled by the District). Further, EMV did not make any deposits to the Eastern Market Enterprise Fund pursuant to section 8 of the amendment. EMV made only one \$10,000 transfer to the Fund in July 2005. EMV’s total Market Revenue was in excess of \$20,000 for each of the 24 quarters through December 31, 2007.

The Auditor found that Section 5 of the Agreement was deficient in that it did not specify whether EMV was to deposit all Market Revenue into the Fund before or after EMV deducted its expenses. Further, the Auditor found that OPM’s designated representative was not aware of the amount of reserves the District deemed advisable to be maintained by EMV as discussed in section 8 of the third amendment and extension.

Based on the language in Section 5 of the Agreement that EMV deposit “all” Market Revenue in the Eastern Market Enterprise Fund, in excess of \$20,000, the audit team conducted its analysis using EMV’s revenue *before* rather than after the deduction of expenses. Table II below presents EMV’s total quarterly revenue (before the deduction of expenses) for each quarter of the fiscal year and the excess over \$20,000 that should have been deposited into the District’s Eastern Market Enterprise Fund.

TABLE II
Total Quarterly Market Revenue in Excess of \$20,000
January 1, 2002 to December 31, 2007

Quarter	Total Revenue	Excess over \$20,000
1/1/02-3/31/02	57,624.41	37,624.41
4/1/02-6/30/02	62,173.60	42,173.60
7/1/02-9/30/02	59,531.15	39,531.15
10/1/02-12/31/02	62,584.60	42,584.60
1/1/03- 3/31/03	66,723.60	46,723.60
4/1/03- 6/30/03	65,215.02	45,215.02
7/1/03- 9/30/03	61,683.83	41,683.83
10/1/03- 12/31/03	63,993.67	43,993.67
1/1/04-3/31/04	64,435.30	44,435.30
4/1/04-6/30/04	69,410.93	49,410.93
7/1/04-9/30/04	73,834.33	53,834.33
10/1/04-12/31/04	82,915.30	62,915.30
1/1/05-3/31/05	63,060.31	43,060.31
4/1/05-6/30/05	77,013.94	57,013.94
7/1/05-9/30/05	75,665.26	55,665.26
10/1/05-12/31/05	79,856.76	59,856.76
1/1/06-3/31/06	73,051.65	53,051.65
4/1/06-6/30/06	81,068.94	61,068.94
7/1/06-9/30/06	86,264.59	66,264.59
10/1/06-12/31/06	96,555.64	76,555.64
1/1/07-3/31/07	60,873.96	40,873.96
4/1/07-6/30/07	41,649.20	21,649.20
7/1/07-9/30/07	26,358.50	6,358.50
10/1/07-12/31/07	84,675.20	64,675.20
TOTAL	\$1,636,219.69	\$1,156,219.69

Source: EMV financial statements

According to EMV officials, they did not deposit revenue exceeding \$20,000 into the Enterprise Fund because in some months Market net income was not sufficient to cover its operating expenses which resulted in a net operating loss in those months. As a consequence, EMV decided not to make deposits to the Enterprise Fund and then have to request money from the Enterprise Fund to cover repair, maintenance, and other operating expenses. The Auditor's review of financial reports submitted by EMV to OPM indicated that in some months total expenses did exceed total revenue collected for the month. However, the Auditor found EMV's reason for not making transfers to be questionable and unsupported by any credible evidence. Further, the Auditor found that EMV did not make deposits to the Enterprise Fund even when its quarterly revenues *exceeded* expenses.

Further, OPM's designated representative could not document that EMV's lease and property management agreement had been amended to allow EMV to retain Market revenue in excess of \$20,000. The Auditor did not find any language in the Agreement or approval by OPM management permitting EMV to use its discretion in deciding whether or not to make deposits to the Enterprise Fund. The Auditor found that OPM management's ineffective oversight and failure to establish a credible system of accountability allowed EMV to operate according to its own interests and dictates.

Accountable OPM personnel did not effectively or adequately monitor and track revenues collected by EMV to determine the amount and source of revenue EMV collected, and whether the revenue collected monthly exceeded \$20,000. Further, OPM management failed to ensure that EMV complied with the Agreement provision requiring the deposit of revenue in excess of \$20,000 into the Fund on a quarterly basis. EMV submitted monthly financial reports to OPM but there was no evidence that accountable OPM management personnel ever reviewed and verified the reports for completeness, accuracy, or the validity regarding revenue and expenses reported. Further, there was no evidence that accountable OPM management personnel required EMV to periodically provide documentation to support the revenue and expenses reported.

RECOMMENDATIONS

1. EMV (or the Market Manager) must make quarterly deposits to the Fund of all Market revenue exceeding \$20,000 as required by Section 5 of the Agreement and OPM management must monitor, review, and verify the accuracy of financial reports submitted by EMV or the Market Manager to ensure that the appropriate deposits are made to the Eastern Market Enterprise Fund.

2. OPM management should require EMV (or the Market Manager) to submit copies of the back and front of canceled checks in addition to the monthly financial reports and copies of the monthly bank statement for the Market operating account.
3. _____ OPM management must immediately specify, in writing, whether the Market Manager should deposit *all* revenue in excess of \$20,000 *before* deduction of Market operating expenses or *after* expenses are deducted.
4. During months when revenues collected are not sufficient to cover operating expenses, the Market Manager must request funds from the District to cover these expenses as required by the Agreement.
5. OPM management must develop future Market Manager Agreements that contain provisions that are clear and specific regarding the Market Manager's responsibility to deposit revenue to the Fund and properly document and account for all Market revenue collected and all expenditures of Market revenue.

EMV Paid CPL Approximately \$36,000 in Addition to Monthly Payments Under A Cleaning and Maintenance Contract

EMV's cleaning and maintenance contract with CPL provided that CPL provide the following monthly services, at the following rates: (1) plumbing maintenance \$250; (2) Security \$200; (3) parking enforcement \$100; (4) cleaning supplies \$200; maintenance and repair \$400; and (5) interior cleaning \$2,791.²⁸

The Auditor found that despite the fact that EMV paid CPL monthly to clean, repair and maintain the Market, several areas of the Market were in need of repair. For example, according to a February 2006 report on the rehabilitation, restoration and reconstruction of the Market,²⁹ the wood windows in the South and North halls were in fair to poor condition with paint peeling or chipping in many locations and many windows no longer operable; in the South Hall gutter, leader heads, and downspouts were in fair condition and some had separations at their seams; and faucets in the tenant

²⁸See Cleaning and Maintenance Contract between EMV and CPL Company effective February 2002. The contract period was for one year beginning February 2002 and was to be automatically extended and renewed on each anniversary date on the same terms and condition unless one of the parties gave written notice of termination at least 30 days prior to the anniversary date.

²⁹See "Eastern Market-Schematic Design Report (Final) Rehabilitation, Restoration and Reconstruction," prepared for OPM by Quinn Evans/Architects, dated November 14, 2005 and updated February 9, 2006.

spaces appeared to be leaking. Accountable OPM officials did not conduct periodic inspections of the Market to ensure that EMV properly cleaned and maintained or made needed repairs to the Market while under EMV's management.

The Auditor also found that EMV made payments to CPL beyond the monthly contract payments for cleaning, repair and maintenance services without any written justification for the additional payments. Table III presents examples of additional services EMV paid CPL to provide.

TABLE III
Examples of
Additional Payments to CPL Beyond Contract Payments
January 2002 through December 2007

Description of Work	hours worked	Amount
Had to clean an office on the 2 nd floor, had to sweep, vacuum. Had to demolish (2) wooden tables and cut the wood and cut all large items in order to fit in the dumpster. Had to carry everything into the dumpster. Had to clean the stairs	8	\$400
Had to repair an 8 ft. light fixture located in front of the office. Had to place (3) covers in an outside light fixture	4	\$200
Had to close and seal all the windows around the high part of the building because it was getting too cold inside the building	not provided	\$250
Had to inspect the hand dryers in the restrooms because they were not working. The problem was a short in the breaker.	3	\$150
Had to change an electrical ballast in an 8 ft. light fixture. Had to change (6) 8 ft electrical tubes in light fixtures located in the hall	3	\$150
Had to do a detailed cleaning on all the ceilings of all the vendors in Eastern Market	not provided	\$1,100
Total		\$2,250

Source: EMV paid invoice registry and check detail and vendor invoices

According to EMV officials, the additional services provided by CPL were beyond the scope of CPL's contract. To the contrary, the Auditor found that, based on the description of services detailed in the contract between EMV and CPL, the additional cleaning, repair, and maintenance services were well within the scope of CPL's initial contract for which it received a monthly payment.

New CPL Contract Required CPL to Perform Fewer Duties at a Higher Contract Amount

Prior to September 2007, CPL had a contract with EMV for several years to provide cleaning, repair, maintenance and other services at Eastern Market. However, EMV substantially changed the scope of services and the contract price and awarded CPL a new contract in 2007.

The Auditor also found that the scope of services for the new contract did not include all the services that were include in the prior contract yet the overall monthly cost for the new contract was approximately \$2,753 higher than the prior contract. The scope of services to be performed daily as provided in the new contract include:

- open all doors to the market;
- sweep and maintain all the common grounds free of debris;
- clean off all the doors;
- clean and maintain all the bathrooms clean;
- remove all the trash;
- water the grass;
- close the market at 6:00 p.m.; and
- mop all the interior floors.

The following duties would be done on Mondays:

- break down all the boxes;
- wash out all the trash cans; and
- hose down all the floors.

The scope of services for the new contract did not include the following services that were included in the prior contract: plumbing maintenance, security, parking enforcement or repair. The Auditor found that the new contract price was \$16.50 per hour. Although the new contract was priced at an hourly rate, CPL estimated the total monthly hours at 336 hours per month or for a total of \$5,544 as compared to a \$2,791 monthly contract price under the prior contract. The Auditor's review of bills submitted by CPL for October, November and December 2007 reflected a total of 1,009 hours billed at a total cost \$16,648.50 for a monthly average of 336 hours at a monthly cost

of \$5,544. At this rate, the new contract would cost approximately \$33,036 more annually than the previous contract while providing substantially fewer services.

RECOMMENDATIONS

1. EMV refrain from making additional payments to CPL for services already covered by existing contractual terms/provisions.
2. OPM periodically inspect the Market to ensure that the Market is properly cleaned and maintained and that necessary repairs are made timely by the Market Manger.

MARKET MANAGER PERMITTED INADEQUATE INTERNAL CONTROLS OVER THE COLLECTION OF FEES FROM VENDORS ON THE FARMER'S LINE

The District of Columbia Office of the Chief Financial Officer's Financial Policies and Procedures Manual (Manual), Section 1010.400 (E), states that agencies must ensure that contractors collecting funds on behalf of the District maintain proper records and provide adequate physical control over such funds.³⁰ Section 1010.601(e-f) requires that a revenue cash receipt form or a form detailing the attributes of a payment should be prepared when collecting cash (checks). The form should record, at a minimum, the revenue type, the name of the person or organization remitting the funds, the purpose, amount, and form of remittance (check, money order, etc.). An agency supervisor should then validate its accuracy by signing and dating the form to document responsibility for verifying the receipts and preparing the form which lists the checks and money orders.

To ensure proper control over the collection of funds, EMV should have established, but failed to do so, similar procedures for the collection of payments from vendors on the Farmer's Line. This lax practice was also exacerbated by EMV's failure to enter into written use agreements with vendors using space on the Farmer's Line.

³⁰See the District of Columbia Office of the Chief Financial Officer's Office of Financial Operations and Systems' Policies and Procedures Manual, Volume 1, District- Wide, effective August 31, 1998 and updated in fiscal year 2004.

The Auditor found that EMV failed to develop and implement written policies and procedures for the collection of fees and other payments, and did not establish adequate procedures to verify that amounts collected from vendors on the Farmers' Line were accurate and represented a payment from each vendor. In other words, there was no credible system of financial accountability in use by EMV.

Further, the Auditor found inadequate segregation of duties in that only one individual performed the incompatible duties of: (1) determining the actual number of vendors on the Farmer's Line each Saturday and Sunday and the number of stalls, tables or tents used by each vendor; and (2) collecting required fees from each vendor and remitting the amount collected to EMV. When turning over to EMV the fees collected, the employee did not provide any supporting documentation such as a listing of vendors using space on a Saturday or Sunday or the number of stalls, tables or tents used by each vendor. Therefore, EMV could not verify with any level of accuracy the fees owed and the fees actually collected. The practice permitted by EMV created numerous opportunities for manipulation and theft of revenue.

Further, the lack of written policies and procedures and the failure to separate duties created an unreasonable risk of potential fraud and theft of Farmer's Line revenues.

RECOMMENDATIONS

1. EMV (or the Market Manager) must segregate functions related to collection of fees from the Farmer's Line. One individual should create a written record of the number of vendors on the farmer's line and the number of stalls, tables, or tents used by each vendor while another individual should verify the count and collect the fees from each vendor.
2. OPM must monitor EMV's collection of fees from the Farmer's Line and periodically independently verify that the reported number of vendors and amounts collected are accurate.

ACCOUNTABLE OPM OFFICIALS DID NOT ESTABLISH AN EFFECTIVE REVIEW PROCESS FOR EXPENDITURES FROM MARKET REVENUE AND SOME RECEIPTS PRESENTED FOR REIMBURSEMENT DID NOT PROVIDE ADEQUATE JUSTIFICATION

Section 5 of the Agreement states, in relevant part, the following:

EMV shall pay from the Market Revenue, the cost of all utilities, the Market Manager Fee, all routine repair and maintenance expenses, insurance costs and all other operating expenses deemed advisable by EMV in its reasonable discretion, including but not limited to cleaning and other on-site personnel, trash removal costs, security and supplies (“operating expenses”) of this Agreement.

The Auditor found that accountable OPM managers and staff to whom responsibility for this Agreement was delegated failed to establish an effective accountability process to ensure that expenditures from Market revenue were reasonable, necessary, and related to Market operations. The Auditor found that some disbursements made from Market revenue appeared unrelated to the operation of the Market. Instead, these expenditures appeared to be the personal expenses of the Market Manager. As such, the expenses should have been paid from the Market Manager’s fee. Examples of questionable disbursements included:

- \$300 in reimbursements to the President and Vice President/Treasurer of EMV for parking and business meals which appeared unrelated to operating expenses of the Market;
- \$100 parking ticket issued to the Vice President/Treasurer of EMV, which was unrelated to the operations of the Market. The parking ticket reflected a violation of District parking regulations as a result of the poor judgment of the EMV official.
- \$11,200 for services rendered in connection with the preparation of Form 990 (return of organization exempt from income tax) for EMV, Inc.

The Auditor found that receipts requesting reimbursements for parking and meals often did not provide the nature or purpose of the meetings, or the relevance of the expense to Market operations and management.

In response to the Auditor's draft report, EMV referenced section 8 of the First Amendment and Extension of Lease and Property Management Agreement as providing authority for EMV to use Eastern Market revenue of \$11,200 to pay for the preparation of its Internal Revenue Service (IRS) Form 990. However, Section 8 stipulates that expenses incurred by EMV to maintain its not-for-profit status are to be paid from EMV's account and not from Eastern Market's revenue. IRS Form 990 is not an annual tax return for Eastern Market. Rather, the submission of IRS Form 990 is required by the IRS as a result of EMV's not-for-profit status.

RECOMMENDATIONS

1. OPM management establish an effective review process to ensure that expenditures from Market revenue are reasonable and related to Market operations and that personal expenses of the Market Manager are paid only from the Market Manager's fee.
2. OPM management require EMV to promptly reimburse the Fund at least \$11,600 for amounts improperly disbursed from Market revenue for non-market related expenses.
3. The President and Vice President/Treasurer of EMV provide the necessary justification and documentation to support reimbursement requests from Market revenue.

ACCOUNTABLE OPM OFFICIALS FAILED TO CONDUCT BIENNIAL ASSESSMENTS OF EMV's PERFORMANCE

Section 4 of the First Amendment and Extension of the Agreement,³¹ dated January 1, 2003, states that the District shall conduct written biennial performance reviews of EMV. The first review should have been conducted in January 2005. The Auditor found that accountable OPM managers never conducted a performance review of EMV as required by the Agreement. According to a representative of OPM, this was an oversight and a review would soon be conducted. However, as of August 2007, accountable OPM managers had not conducted a performance review of EMV's management of Eastern Market.

³¹ See Section 4, "Adoption of Business Plan," of the First Amendment and Extension of Lease and Property Management Agreement dated January 1, 2003.

RECOMMENDATION

Accountable OPM officials must immediately conduct the required performance review of EMV and provide the results of this review to the Auditor within 60 days of the date of the report. Accountable OPM officials must ensure that in the future the required biennial review is timely conducted.

ACCOUNTABLE OPM OFFICIALS MADE PAYMENTS TO A CORPORATION AFFILIATED WITH ONE OF EMV'S OFFICERS FOR CONSTRUCTION MANAGEMENT SERVICES PROVIDED WITHOUT A WRITTEN CONTRACT

27 DCMR §1006.1 states in relevant part, the following: “The procurement business of the District shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none.”³²

The Auditor found that Site Construction received approximately \$43,000 to serve as construction manager for the construction of the Market shed without a valid contract with OPM. Accountable OPM management personnel could not provide the Auditor with a contract setting forth the terms and conditions or the scope of work for the services to be rendered.

Further, according to information obtained by the Auditor, one of EMV's officers was an owner of Site Construction Inc. As such, OPM's unethical actions of awarding a sole source oral contract to Site Construction, Inc. was not an arms-length above board transaction, and violated District procurement law regulations. OPM management's actions were not impartial or transparent, and clearly gave preferential treatment to a vendor that was obviously identified by and with ownership ties to the Market Manager, EMV. The audit team noted that the District paid EMV for the construction management services provided by Site Construction Inc. and EMV, in turn paid Site Construction Inc. from the Market's operating account which is independently maintained outside the District's financial management system. The irregularity of this transaction requires further investigation by appropriate law enforcement authorities.

³²See 27 DCMR § 1006.1 (2005).

In its written comments to the Auditor's draft report, EMV references a "written letter agreement" signed by the "then acting Eastern Market coordinator" as evidence that payments to Site Construction were not based on an oral agreement. However, the letter to which EMV refers does not contain all of the elements of a valid contract. The letter simply memorializes "discussions" between EMV and an OPM special assistant. The letter does not contain a distinct scope of services or the period of time when Site Construction was to perform the services.

RECOMMENDATIONS

1. OPM management must comply with the District's ethical standards and procurement regulations when awarding contracts.
2. The Office of the Inspector General investigate the award of this oral contract by OPM management to Site Construction Inc., its relationship to EMV, and payments made to it by EMV officials.

EASTERN MARKET NEEDED EXTENSIVE REHABILITATION, RESTORATION AND RECONSTRUCTION PRIOR TO APRIL 2007 FIRE

The District's Agreement with EMV states that EMV shall be responsible to make and pay for all routine maintenance and repair work to the premises that is necessary to operate the Premises in a safe manner and in compliance with all applicable laws. Further, according to D.C. Code, Section 37-102 (a), the District of Columbia shall remain responsible for capital expenditures for Eastern Market and the Eastern Market Square.

According to a final design report prepared by Quinn/Evans Architects in November 2005 and updated in February 2006, the last capital renovation of Eastern Market occurred in 1973 and the Market had experienced significant wear and tear and substantial deferred maintenance since that time. Therefore, prior to the fire that destroyed significant portions of the Market in April 2007, the Market was in need of extensive rehabilitation, restoration and reconstruction.

According to an official of OPM.'s Capital Construction Services Administration (CCSA), major renovations to the Market were scheduled to begin in the Fall of 2007. The planned renovations were based primarily on an Eastern Market Building Condition Assessment³³ report prepared in January 1998 by Oehrlein & Associates Architects. The report identified specific conditions and made recommendations for correction. Some of the conditions included the following: (1) no central fire alarm or fire suppression system in the building; (2) the entire electrical system for the Eastern Market Building and Market Shed, including the North, South and Center Halls, must be removed and replaced; (3) cracks in brick masonry walls; (4) painted plaster ceilings were cracked, stained and water damaged; (5) the south portion of the building was heated and ventilated but had no air conditioning while the north portion had no heating, ventilation, air conditioning and no permanent plumbing facilities. Table IV summarizes the proposed improvements and the estimated cost as presented in the January 1998 report.

³³See draft report prepared by Oehrlein & Associates Architects entitled, "Eastern Market Building Condition Assessment-Assessment of Non-Roof Repairs, Renovations and Refurbishment Needed at the Eastern Market Buildings", dated January 7, 1998. According to the report, repairs covered are those that would typically be the responsibility of a landlord in a retail building such as a commercial mall.

Table IV
Summary of Proposed Repairs and Improvements
Eastern Market
Draft Report dated January 7, 1998

Proposed Repair Task	Estimated Cost of Repair
Roof System	\$70,000
Exterior Metal Chimney	5,000
Exterior Metal Trim	30,000
Exterior Walls and Masonry	55,000
Bird Deterrent System	10,000
Windows and Doors	110,000
Center Hall Ceiling and Light Wells	15,000
Interior Wall/Ceiling Repairs and Finishes	80,000
Interior Floor Finishes and Repairs	96,000
Interior Stairs	5,000
Emergency Egress Alterations at Doors	14,000
H/C Entrance Alterations	10,000
Structural Repairs	60,000
Renovate two rest rooms, install three new rest rooms	120,000
Mechanical and plumbing systems repairs	580,000
Electrical system repairs	191,000
Subtotal	\$1,451,000
Contingency @ 15%	218,000
Total	\$1,669,000

Source: draft report entitled: "Eastern Market Building Condition Assessment, Assessment of Non-Roof Repairs, Renovations and refurbishment needed at the Eastern market Buildings," dated January 7, 1998.

According to an OPM CCSA official, plans to rehabilitate, restore and reconstruct the Market were 90% complete, prior to the fire. The Auditor reviewed the updated February 9, 2006 Eastern Market-schematic design report (final) on the rehabilitation, restoration and reconstruction of the

Market.³⁴ According to the report, the overall infrastructure of the Market was outdated and the existing electrical service was obsolete and needed replacement in its entirety. The building contained a partial fire alarm system in the South Hall public market. However, the building was not provided automatic sprinkler protection. The scope of work included in the February 2006 updated report included, but was not limited to, the following areas (1) restoration of skylight; (2) ADA-compliant restrooms at ground floor; (3) replace south hall roofing and missing slates on center and north hall; (4) rehabilitate doors and windows; (5) replace incoming electrical service with a larger capacity system; (6) provide sprinkler system; (6) provide new alarm system; and (7) provide ADA compliant entrances. OPM CCSA officials indicate that current rehabilitation efforts relate to recovery from the fire.

MFG HAS NOT SUBMITTED REQUIRED DOCUMENTS TO EMV AND THE DISTRICT

EMV's sublease agreement with Market Five Gallery Inc.³⁵ (MFG) states that MFG must submit the following documents to EMD:

1. semi-annual and annual income and expense statements within (30) days of the end of each semi-annual period;
2. vendor agreements with all vendors operating at any time on the Premises, within ten (10) business days of their execution; and
3. certificate of insurance for a comprehensive general liability insurance policy including public liability and broad form property damage with a minimum combined single limit of liability of \$2,000,000 for personal injuries or deaths of persons occurring in or about the Premises.³⁶

³⁴See report prepared by Quinn Evans/Architects entitled, "Eastern Market-Schematic Design Report (Final) Rehabilitation, Restoration and Reconstruction," dated November 14, 2005 and updated February 9, 2006.

³⁵MFG's sublease with EMV ended on July 31, 2006. According to an OPM representative, EMV has not awarded a new sublease.

³⁶EMV and the District must be named as additional insureds on all such policies on each anniversary date of the commencement of the sublease period.

The Auditor determined that financial statements, vendor agreements, and the insurance policy were available in MFG's records but EMD could not provide copies of the documents to the audit team. This condition indicates that EMD did not adequately ensure that MFG complied with the provisions of MFG's sublease.

RECOMMENDATIONS

1. MFG must immediately submit the documents required by its sublease to the Market Manager.
2. OPM management and the Market Manager must ensure that required documents are received and reviewed when they are due or hold MFG liable for failing to meet the terms of their sublease agreement.
3. For future sublease agreements, the Market Manager must include penalty clauses for failure to voluntarily provide required documents or comply with any term of the agreement.

STATUS OF IMPLEMENTATION OF RECOMMENDATIONS MADE IN THE AUDITOR'S REPORT DATED JULY 16, 2002

On July 16, 2002, the Auditor issued a report entitled, "Eastern Market Management and Oversight Needs Substantial Improvement." The report contained 12 major findings and seven major recommendations. The Auditor evaluated the implementation of the seven major recommendations.

The status of recommendations contained in the Auditor's 2002 report are as follows:

Recommendation

The District's Chief Financial Officer establish the Eastern Market Enterprise Fund consistent with all requirements of D.C. Law 12-228. Money collected on behalf of Eastern Market must not be commingled with money in the General Fund. A separate Eastern Market Enterprise Fund account must be established outside of the General Fund.

Status: Not Implemented

The District's CFO has not established the Fund as an interest-bearing account consistent with all requirements of D.C. Law 12-228.³⁷

Recommendation

The Office of the Chief Financial Officer correct the system deficiency in which the Eastern Market Fund balance was misclassified as deferred revenue.

Status: Implemented

Balance in deferred revenue was transferred to the Eastern Market Fund. As of December 31, 2007, there was a zero balance in the deferred revenue account for Eastern Market.

Recommendation

The Office of Finance and Resource Management must take the appropriate action to ensure that at least \$3,953.36 in interest income earned for fiscal years 1999, 2000, 2001, and 2002 as of December 31, 2001 is credited to the Eastern Market Enterprise Fund. Future deposits must also earn interest. Failure of any official or employee under the personnel jurisdiction of the Chief Financial Officer of the District of Columbia to promptly credit the Eastern Market Enterprise Fund with interest earned should be held accountable to the fullest extent permitted under the comprehensive Merit Personnel Act or personnel rules established by the Chief Financial Officer of the District of Columbia.

Status: Implemented

Interest income is credited to the Eastern Market Fund based on the Fund balance and the interest rate.

³⁷See D.C. Code, § 37-193.

Recommendation

The CPMO should enforce written policies and procedures thus providing effective accountability for the collection of fees and rent from occupants and others who use Eastern Market space.

Status: No Longer Applicable

This recommendation is no longer applicable. The CPMO has established new policies and the Market Manager has adopted new policies and procedures pertaining to the collection of fees and rent.

Recommendation

The CPMO must verify that the interim collection procedures established for the Farmers' Line are adhered to and that all required documentation is maintained.

Status: No Longer Applicable

This recommendation is no longer applicable. Fees from vendors using space on the Farmers Line are now collected by EMV. These collection procedures and their adequacy were discussed earlier in this report.

Recommendation

The CPMO must ensure that space made available to the Farmer's Line is used only by vendors who meet the definition of "farmer" as set forth in D.C. Law 12-228.

Status: Not Implemented

The Auditor's site visit to the Market determined that not all vendors on the Farmer's Line sold agricultural products as defined in the Eastern Market statute. This use of the Farmer's Line by vendors selling nonagricultural products may indicate an opportunity for the Council to reevaluate whether legislatively limiting the use of the Farmer's Line exclusively to farmers is necessary.

Recommendation

Failure of any accountable O.M. official or employee to ensure the collection of all receipts and compliance with established procedures should be held accountable to the fullest extent permitted under the Comprehensive Merit Personnel Act and District Personnel rules.

Status: Not Implemented

The CPMO did not hold any O.M. official or employee accountable for the failure to adhere to the policies and procedures as reported in the Auditor's previous report.

Recommendation

The CPMO establish written policies and procedures governing disbursements from the Eastern Market Enterprise Fund. Further, all amounts received must be reported and recorded before making disbursements. Any disbursements must be properly supported, recorded and reported in the District's financial system.

Status: Not Implemented

The CPMO has not established any written policies and procedures governing disbursements from the Fund. The Auditor notes that the CPMO did not make any disbursements from the Fund during the audit period. However, written policies and procedures should be established in the event the CPMO determines that a disbursement from the Fund is necessary.

CONCLUSION

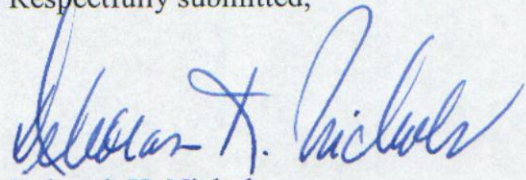
The Auditor found that management of the Office of Property Management (OPM) responsible for the oversight of the Market manager, Eastern Market Ventures, Inc, (EMV) ineffectively managed and administered the Market Management Agreement. The Auditor found that OPM management consistently failed to establish an effective process to monitor and evaluate EMV's performance and establish an effective system of financial and management accountability for Eastern Market finances and operations. Further, OPM management did not ensure that EMV complied with the terms and conditions of the Market Management Agreement before EMV paid itself monthly management fees. OPM management's failure to adequately monitor EMV's

management of Eastern Market operations fostered a lack of compliance with provisions of the Agreement and a total lack of financial and management accountability.

The Auditor also found that EMV failed to comply with all terms and conditions of the Lease and Property Agreement and the Eastern Market law. D.C. Code § 37-106 (a) states that tenants shall not occupy any space or stand inside the Market building without first having entered into a written contract with the market manager. Further, EMV's lease and property agreement with the District stipulated that EMV was to enter into written use agreements, approved by the District, with Farmer's Line vendors. However, for almost the entire six year audit period (January 1, 2002 through December 1, 2007), EMV had not entered into written contracts with all interior tenants and farmers. EMV also failed to comply with the lease and property management agreement by not maintaining its corporate status in good standing.

Finally, EMV made payments to individuals and vendors without valid contracts which set forth the basic essential terms and conditions. Further, OPM management made payments to a corporation affiliated with one of EMV's officers for construction management services without a valid written contract.

Respectfully submitted,



Deborah K. Nichols

District of Columbia Auditor

APPENDIX

Eastern Market Joint Venture
Cash Basis Operating Statements
January 1, 2002 through December 31, 2007

APPENDIX I

	1/1/02 - 9/30/02	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	10/107- 12/31/07
INCOME							
Base Rents	\$164,251.96	\$218,363.26	\$227,797.29	\$246,284.31	\$245,053.90	\$142,483.03	\$64,414.26
Farmer's Income	9,741.00	32,018.75	37,639.50	44,422.50	64,751.78	67,454.02	18,748.49
ATM Income	4,200.00	4,950.00	5,400.00	5,400.00	5,400.00	3,600.00	450.00
EMCAC Promotional Fund	0.00	0.00	0.00	0.00	0.00	6,839.58	0.00
Other Income	0.00	200.00	0.00	0.00	180.00	0.00	0.00
Annual Insurance	0.00	0.00	0.00	83.00	92.00	0.00	0.00
Event Fee	0.00	0.00	200.00	300.00	0.00	200.00	66.00
Late Fees	312.20	600.04	637.44	420.00	1,647.78	2,225.60	926.45
NSF Fees	24.00	75.00	0.00	105.00	6.48	133.52	70.00
Tenant Charge Backs	0.00	0.00	0.00	1,640.00	3,110.00	2,500.00	0.00
Clothing recycle	800.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Income	\$179,329.16	\$256,207.05	\$271,674.23	\$298,654.81	\$320,241.94	\$225,435.75	\$84,675.20
EXPENSES							
Market Manager Fee	\$72,000.00	\$96,000.00	\$96,000.00	\$98,160.00	\$101,104.80	\$122,738.57	\$56,142.45
Interior Cleaning	25,104.25	33,492.00	33,492.00	33,492.00	33,492.00	23,092.75	**
Cleaning Contract	***	***	***	***	***	***	19,338.00
Repairs and Maintenance	11,699.34	32,179.40	13,146.70	15,381.83	21,828.08	19,662.79	7,177.03
Parking Enforcement	7,721.10	21,637.50	24,505.00	24,160.00	31,725.00	30,529.50	9,745.50
Trash Removal	10,270.25	14,493.01	14,991.61	14,490.41	19,517.32	18,900.43	7,305.15
contract trash removal	0.00	0.00	0.00	0.00	0.00	0.00	2,097.42
Market Manager Fee (North Hall)	0.00	0.00	7,500.00	18,000.00	18,000.00	15,229.09	*
Snow Removal	132.00	10,438.50	7,928.75	7,500.00	7,500.00	7,500.00	0.00
Promotions	52.10	499.14	1,024.44	10,447.06	26,108.13	14,387.48	7,061.00
Donations	0.00	0.00	200.00	0.00	0.00	0.00	0.00
Cleaning Supplies	1,800.00	2,400.00	2,400.00	3,198.24	2,416.06	1,400.00	0.00
Entrance Carpet Maintenance	0.00	0.00	0.00	0.00	1,351.48	0.00	0.00
Extermination Costs	2,069.00	5,004.74	4,771.44	5,077.25	3,860.91	3,995.72	1,076.07
Water	5,507.34	12,189.55	8,416.14	8,000.62	9,935.39	6,559.73	158.72
Electric	4,872.48	8,754.10	7,972.59	7,556.56	7,563.41	8,264.96	1,581.80
Insurance	4,815.00	3,930.16	7,061.30	6,959.58	7,717.44	6,902.83	8,044.96
Exterior Cleaning	4,318.75	4,400.00	4,800.00	3,200.00	4,800.00	6,355.75	**
Plumbing Repairs	2,250.00	3,000.00	5,145.38	3,112.50	6,299.37	2,649.74	0.00
Security	1,789.00	2,926.00	4,726.43	4,847.15	2,307.10	1,592.02	0.00
Advertising	1,849.55	658.85	6,333.78	2,546.00	6,812.31	8,621.93	1,816.25
Legal and Accounting	0.00	2,223.70	3,674.00	3,050.00	2,788.00	2,900.00	431.89
Signage	0.00	0.00	0.00	0.00	0.00	12,896.00	0.00
Telephone	0.00	801.81	1,566.53	1,775.58	1,820.20	1,026.95	0.00
Gas	41.77	0.00	0.00	3,794.17	14,977.34	12,433.88	1,723.96
Supplies	1,079.58	500.09	1,060.01	173.00	13.00	90.00	30.00
Postage	234.25	37.50	217.00	51.57	6.00	160.62	74.96
Fees and Permits	184.97	645.00	512.00	13.00	0.00	28.00	0.00
Special Projects Fire	0.00	0.00	0.00	0.00	0.00	10,954.94	758.47
HVAC Repairs	0.00	0.00	0.00	400.00	644.00	0.00	0.00
Dues and Subscriptions	0.00	75.00	258.72	300.00	0.00	0.00	0.00
Bank Charges	12.50	0.00	0.00	79.40	101.90	0.00	0.00
Total Expenses	\$157,803.23	\$256,286.05	\$257,703.82	\$275,765.92	\$332,689.24	\$338,873.68	\$124,563.63
Net Operating Income	21,525.93	-79.00	\$13,970.41	\$22,888.89	-\$12,447.30	-\$113,437.93	-\$39,888.43

Source: EMV Inc.

*included in "Market Manager Fee"

** included in "cleaning contract"

***expenses spread to separate line items (e.g. interior and exterior cleaning)

AGENCY COMMENTS

AGENCY COMMENTS

On September 11, 2008, the District of Columbia Auditor (Auditor) submitted this report in draft to the Office of Property Management (OPM), OCFO's Office of Finance and Resource Management (OFRM), and Eastern Market Venture, Inc. (EMV) for review and comment.

The Auditor received written comments from the OCFO's OFRM on September 23, 2008 and EMV on September 16, 2008. OPM submitted comments on September 29, 2008, after the deadline established by the Auditor. However, the Auditor, in her discretion, attached OPM's comments to this report. Where appropriate, changes were made to the final report based on the comments received. All agency comments, as well as comments received from EMV, are appended in their entirety to this final report.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PROPERTY MANAGEMENT**



Office of the Director

September 29, 2008

Deborah K. Nichols, District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, D.C. 20005

RE: Draft report regarding Eastern Market management and oversight

Dear Ms. Nichols:

I am writing in response to the draft report regarding Eastern Market prepared by your office and sent to me on September 11, 2008 (the "**Draft Report**"). The Office of Property Management's ("**OPM**") responses to the specific recommendations made in the Draft Report are below. As an initial matter however, I would like to note that OPM's ability to remedy some of the longstanding issues at Eastern Market are hampered by two significant factors. First, the District, by and through OPM, has an executed Lease and Property Management Agreement ("**Agreement**") with the current market manager, Eastern Market Venture, Inc. ("**EMV**"). OPM cannot unilaterally modify that Agreement without breaching it and subjecting the District to potential litigation for breach of contract. Second, Eastern Market is subject to the Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998 (DC Official Code § 37-101 *et seq.*) (the "**Act**") which mandates many features of Eastern Market operations such as requiring the Chief Property Management Officer ("**CPMO**") to give the market manager a contract and lease for the market and such as giving existing merchants and vendors certain rights.

OPM, under my leadership of the last nine months, has progressed in reviewing practices at Eastern Market, assessing the current market manager's performance, and developing a strategy to improve Eastern Market management and oversight, including issuing a Request for Proposals for the next market manager upon expiration of the Agreement (on December 31, 2008). It is also worth mentioning that the audit covered the period from January 1, 2002 to December 31, 2007, which is prior to my tenure as Acting Director of OPM and pre-dates virtually all staff members currently assigned to the Eastern Market. OPM fully agrees with the Auditor's general conclusion that Eastern Market still has much room for improvement and we are committed to continuing the

progress made in better oversight of Eastern Market operations and management. OPM's specific responses to recommendations directed to OPM are below.

Prior to addressing the recommendations, I would like to correct some of the information presented in the Background Section of the Draft Report. The Farmer's Line consists of only a portion of the 7th Street frontage of the historic building. The portion is that area of the sidewalk covered by a permanent shed structure. The Third Amendment to the Agreement increased the management fee because of the significant additional duties accepted by EMV arising from the fire at the historic building, including related to the security of the burnt historic building, the design and construction of the East Hall, transition assistance to merchants, and generally assisting in the transition. Additionally, the management fee just prior to the Third Amendment was not as stated in your report because it fails to include the additional North Hall Management Fee. The contract awarded to Turner Construction for the East Hall was not awarded by OPM but by DDOT.

AUDIT SECTION

"EMV DID NOT ENTER INTO WRITTEN CONTRACTS WITH ALL INTERIOR TENANTS AS REQUIRED BY LAW AND TENANTS WERE NOT IN COMPLIANCE WITH CRITICAL LEGAL REQUIREMENTS."

Recommendation: CPMO must immediately establish an effective system of financial and management accountability with regard to the operation of Eastern Market and regularly evaluate the Market Manager's performance to ensure timely compliance with the Agreement prior to paying the fee for managing the Market.

Response: OPM has committed to ensuring financial accountability and controls by devoting a responsible staff person to provide oversight and review of Eastern Market operations. OPM staff is currently proceeding with an internal audit of the manager's obligations under the Agreement and a review of historical financial documentation submitted by the manager. Lastly, the RFP issued for the next market manager will result in the next contract including better oversight mechanisms.

Recommendation: CPMO should revise the Agreement to remove the provision which allows the Market Manager to pay itself its fees. Instead, a process should be established in which CPMO pays the Market Manager after it satisfactory documents and supports all revenues and expenditures, contracts, etc.

Response: The District's agreement with EMV is a legally binding contract which the District cannot unilaterally modify without the mutual consent of the market manager. However, OPM intends to use the impending expiration of the current agreement on December 31, 2008 and the issuance of the Request for Proposals for a new manager as an opportunity to establish more effective financial controls and performance measures going forward.

Recommendation: OPM must define "uniform processing fee" and, if necessary, establish the amount.

Response: The "uniform processing fee" was authorized legislatively in Section 37-105 of the DC Code. City Council has not provided any further definition. The market manager, as part of its establishment of rules and regulations for the Market, will have the responsibility of establishing a uniform rent and fee schedule for uniform application to all Market occupants.

Recommendation: EMV and tenants must comply with D.C. Code §37-106 (a) by executing written contracts to lease or sublease any space or stand inside the Market building. The contracts must specify items the tenants may sell at the Market and must also require that each tenant pay the required uniform processing fee; possess the required liability insurance, business license, and sales and use tax certification number, and comply with applicable laws, regulations and rules governing the Market.

Response: All indoor merchants in the East Hall have executed Sublease Agreements with the market manager. Prior to the vendors' occupancy of the East Hall building in 2007, OPM insisted that all vendors execute occupancy agreements prior to occupying the East Hall and facilitated the execution of such agreements between the interior vendors and the market manager.

Recommendation: EMV (or the Market Manager) and all vendors on the Farmer's Line must immediately establish and execute written use agreements.

Response: The RFP requires and OPM will enforce that the next market manager enter into written use agreements with farmer's line vendors.

Recommendation: Tenants/vendors must immediately establish sales and use tax accounts, file sales and use tax returns, and pay all delinquent sales and use taxes to the District Government. Failure to do so promptly must result in the immediate loss of their privilege to conduct business at Eastern Market.

Response: The Agreement explicitly requires the market manager to use all reasonable efforts to compel its subtenants to comply with applicable laws, which would include taxation laws. OPM has prepared and within seven (7) days hereof, will issue a notice of default to the market manager for failure to use reasonable steps to compel subtenants to comply with the law.

AUDIT SECTION

"EMV MADE PAYMENTS TOTALING APPROXIMATELY \$126,000 FROM FY 2002 TO FY 2007 IN THE ABSENCE OF A VALID EXECUTED CONTRACT THAT SET FORTH THE SCOPE OF SERVICES AND THE RATE OF PAY."

Recommendation: EMV (or the Market Manager) must immediately purchase the required liability insurance naming the District Government as an additional insured for each off-duty MPD police officer that it hires to work at the Market. Proof of insurance must be provided to OPM and MPD annually.

Response: OPM is not in privity of contract with the market manager or MPD as it relates to any security contract and has no authority to enforce the insurance obligations thereunder.

Recommendation: MPD officials must monitor all entities that hire off-duty MPD police officers to ensure that the entities purchase required liability insurance. MPD officials must also ensure that they annually receive a copy of the insurance policy as proof of coverage and that the District has been named as an additional insured on the policy.

Response: OPM is not in privity of contract with the market manager or MPD as it relates to any security contract and has no authority to enforce the insurance obligations thereunder.

Recommendation: EMV officials (or the Market Manager) should execute valid contracts for all vendors when procuring goods and services.

Response: OPM is not a party to the service contracts procured by EMV. However, OPM agrees that EMV should have valid contracts for all vendors providing goods and services at the market because this demonstrates good business practice. EMV bears the specific responsibility of procuring subcontractors that charge fair prices and that perform in a professional and high quality manner. The absence of valid contracts limits EMV's ability to establish performance standards for vendors and define the scope of work and directly frustrates OPM's rights to audit and inspect records (because adequate contractual records do not exist).

Recommendation: EMV (or the Market Manager) must require all vendors to include a statement reflecting the services they actually provided when submitting invoices. Further, EMV (or the Market Manager) must document the services of its on-site personnel provided for the Market versus the services provided exclusively for EMV. The cost of services provided exclusively for the Market Manager must be paid from the Market Manager's fee and not the Market's operating account.

Response: OPM is not in privity of contract with EMV and its vendors; however, going forward, OPM's review of EMV's financial statements and expenditures will require inclusion of copies of written contracts as support for expenditures for services from the Eastern Market Account.

AUDIT SECTION

"EMV DID NOT COMPLY WITH APPLICABLE DISTRICT LAWS AND ITS DISTRICT CORPORATE CHARTER WAS REVOKED"

Recommendation: The District's OPM Director should immediately terminate EVM as Market Manager.

Recommendation: EMV must immediately take the necessary actions to have its corporate status reinstated and comply with Section 20(b) of the Agreement and D.C. Code Section 29.301.83 (a-1).

Recommendation: The CPMO must ensure that EMV promptly seek reinstatement of its corporate status. Further, the CPMO must obtain proof that EMV has filed all reports necessary to maintain its corporate status in good standing in the District.

Combined Response: Both the Act and the Agreement require that EMV maintain its corporate and non-profit status. OPM has prepared and will issue a notice of default to EMV within seven (7) days hereof which identifies EMV's failure to maintain its corporate status as a basis of default. The Agreement and the notice provide that in the event that such default is not cured by EMV within thirty (30) days of such notice the District may terminate the Agreement.

AUDIT SECTION

"EMV MADE ONLY ONE REQUIRED DEPOSIT TO THE EASTERN MARKET ENTERPRISE FUND (FUND) AFTER BECOMING THE MARKET MANAGER: AGREEMENT UNCLEAR REGARDING DEPOSITS."

Recommendation: EMV (or the Market Manager) must make quarterly deposits to the Fund of all Market revenue exceeding \$20,000 as required by Section 5 of the Agreement and the CPMO must monitor, review, and verify the accuracy of financial reports submitted by EMV or the Market Manager to ensure that the appropriate deposits are made to the Eastern Market Enterprise Fund.

Responses: OPM has designated an OPM staff person with the requisite background and skills to review EMV's financial records and to provide appropriate and necessary oversight and review of the manager's financial documentation.

Recommendation The CPMO should require EMV (or the Market Manager) to submit copies of the back and front of canceled checks in addition to the monthly financial reports and copies of the monthly bank statement for the Market operating accounts.

Response: OPM will ensure that all submissions by the manager are consistent with generally accepted accounting principles and that such

submissions provide the District with an adequate opportunity to verify the expenses and account activity.

Recommendation: The CPMO must immediately specify, in writing, whether the Market Manager should deposit all revenue in excess of \$20,000 before deduction of Market operating expenses or after expenses are deducted.

Response: Within fifteen (15) days hereof, OPM will provide EMV with direction as to whether revenue in excess of \$20,000 should be deposited before deduction of Market operating expenses or after expenses are deducted.

Recommendation: During months when revenues collected are not sufficient to cover operating expenses, the Market Manager must request funds from the District to cover the Agreement.

Response: The current Agreement already provides that the District shall provide funds after notice from EMV. The District cannot unilaterally impose any additional requirement because the modification of the Agreement requires the mutual agreement of both parties.

Recommendation: The CPMO must develop future Market Manager Agreements that contain provision that are clear and specific regarding the Market Manager's responsibilities to develop revenue to the Fund and properly document and account for all Market revenue collected and all expenditures of Market revenue.

Response: The current provision regarding the deposit of excess revenue is very clear and explicitly states that all funds in excess of \$20,000 shall be deposited into the Fund. This language is not ambiguous. The RFP for the new manager makes clear that deposits into the Fund shall be made after expenses are deducted.

AUDIT SECTION

"EMV Paid CPL Approximately \$39,000 in Addition to Monthly Payments Under a Cleaning and Maintenance Contract"

Recommendation: (1) Contract with CPL should be terminated immediately and the cleaning, maintenance and repair services required to maintain the Market should be procured on a competitive basis; (2) EMV must obtain prior written approval from the District before entering into any contract or subcontract with an aggregate value greater than \$25,000; and (3) EMV (or the Market Manager) must obtain at least three written quotations from vendors for each procurement of goods and services in excess of \$25,000.

Combined Response: OPM is not in contract privity with CPL and has no legal basis on which to directly terminate any subcontract between EMV and CPL.

OPM is sending a Notice of Default to EMV which notice includes, *inter alia*, EMV's failure to obtain prior written approval from OPM. EMV alleges that it did obtain at least three written quotes and OPM is requesting copies of those quotes. If EMV is unable to produce the written quotes, OPM will issue a Notice of Default for that breach of the Agreement.

Recommendation: EMV refrain from making additional payments to CPL for services already covered by existing contractual terms/provisions.

Response: OPM has no current authority to prohibit EMV in its contractual arrangements. However, OPM will review future financial reports to ensure that EMV does not make improper, excess, payments to CPL.

Recommendation: OPM periodically inspect the Market to ensure that the Market is properly cleaned and maintained and that necessary repairs are made timely by the Market Manager.

Response: OPM conducts weekly inspections of the interior of the East Hall and the outside market spaces to ensure that it is in good repair and that the outside marketplace is cleaned, maintained and ready for vending. Any issues are reported to the market manager.

AUDIT SECTION

"Market Manager Permitted Inadequate Internal Controls over the Collection of Fees from Vendors on the Farmer's Line"

Recommendation: EMV (or the Market Manager) must segregate functions related to collection of fees from the Farmer's Line. One individual should create a written record of the number of vendors on the farmer's line and the number of stalls, tables or tents used by each vendor while another individual should verify the count and collect the fees from each vendor.

Response: OPM has no current authority under the Agreement to require and the Act does not otherwise mandate that EMV structure its contractual arrangements with vendors as recommended by the Auditor. However, OPM has provided in the RFP that the next market manager shall establish, in coordination with OPM, market rules including procedures for assigning stalls to vendors and collecting the fees. OPM believes that the Auditor's concerns should be addressed under the conditions that OPM is going to require in any new management contract.

Recommendation: OPM must monitor EMV's collection of fees from the Farmer's Line and periodically independently verify that the reported number of vendors and amounts collected are accurate.

Response: OPM will work with the market manager to establish a procedure for periodically verifying the number of Farmer's Line vendors and the fee collections by the market manager. OPM will send a letter to EMV instructing them to implement an appropriate system of checks and balances for the Farmer's Line collections.

AUDIT SECTION

"Accountable OPM Officials did not Establish an Effective Review Process for Expenditures from Market Revenue and some Receipts Presented for Reimbursement did not Provide Adequate Justification"

Recommendation: CPMO must establish an effective review process to ensure that expenditures from Market revenue are reasonable and related to Market operations and that personal expenses of the Market Manager are paid only from the Market Manager's fee.

Response: OPM has an in-house accountant, staff member who reviews EMV's monthly financial submissions including operating statement, balance sheet, income statement and general ledger. OPM will be awarding the next market manager contract via the RFP under which the management fee will be paid independent of the Eastern Market operating account. This will make it more difficult for a market manager to make disbursements from the operating account that should have been paid from its fee as such disbursements will be more obvious in the financial reports.

Recommendation: CPMO require EMV to promptly reimburse the Fund at least \$11,600 for amounts improperly disbursed from Market revenue for non-market related expenses.

Response: OPM is sending a Notice of Default to EMV which notice includes, *inter alia*, EMV's payment of organization costs out of Market revenue.

Recommendation: President and Vice President / Treasurer of EMV provide the necessary justification and documentation to support reimbursement requests from Market revenue.

Response: OPM will request justification documentation.

AUDIT SECTION

"CPMO Failed to Conduct Biennial Assessments of EMV's Performance"

Recommendation: CPMO must immediately conduct the required performance review of EMV and provide the results of this review to the Auditor within 60 days of the date of

this report. The CPMO must ensure that in the future the required biennial review is timely conducted.

Response: OPM is in the process of preparing a written evaluation of EMV's performance.

AUDIT SECTION

"CPMO Made Payments to a Corporation Affiliated with one of EMV's Officers for Construction Management Services Provided Without a Written Contract"

Recommendation: (1) CPMO must comply with the District's ethical standards and procurement regulations when awarding contracts; and (2) Office of the Inspector General investigate the award of this oral contract by OPM management to Site Construction, Inc., its relationship to EMV, and payments made to it by EMV officials.

Combined Response: OPM is in full compliance with the District's ethical standards and procurement regulations when awarding contracts. I have no knowledge that OPM has not entered into any oral contract for goods or services with Site Construction, Inc. During my tenure, EMV has requested approval of payment to Site Construction for construction management services. OPM has not approved EMV's request to pay, as a Market expense, its affiliate for construction management services because EMV has failed to provide adequate documentation of the services claimed.

AUDIT SECTION

"MFG Not Submitted Required Documents to EMV and the District"

Recommendation: (1) MFG must immediately submit the documents required by its sublease to the Market Manager; (2) CPMO and the Market Manager must ensure that required documents are received and reviewed when they are due or hold MFG liable for failing to meet the terms of their sublease agreement; and (3) For future sublease agreements, the Market Manager must include penalty clauses for failure to voluntarily provide required documents or comply with any term of the agreement.

Combined Response: MFG's sublease is and has for some time been expired. MGF no longer occupies the North Hall of Eastern Market and it currently has no contractual basis for acting in any management capacity at the Market. For future sublease agreements, OPM will consider the option of including penalty provisions, in addition to the usual default, for failure of a subtenant to provide required documentation timely.

AUDIT SECTION

"Status of Implementation of Recommendations Made in the Auditor's Report Dated July 16, 2002"

Unimplemented 2002 Recommendation: CFO to establish Fund consistent with DC law.

Response: This recommendation is in the purview of the OCFO, not OPM.

Unimplemented 2002 Recommendation: Farmer's Line space to be used only by vendors meeting the definition of "farmer" as set forth in DC Law 12-228.

Response: D.C. Official Code § 37-105(o) specifies that the market manager must give "priority" to "farmers and other market vendors of agricultural products" for the Farmers' Line sidewalk market stalls with first priority to "farmers" and second priority to "food merchants and wholesalers of agricultural products," subject in all events to a right of first refusal to certain market vendors of agricultural products. OPM has no evidence and has received no complaints that this prioritization has been violated. Restricting the Farmer's Line to only "farmers" would require a legislative amendment to the Act.

Unimplemented 2002 Recommendation: Failure of District official or employees to ensure collection of receipts and compliance with procedures should be held accountable to fullest extent permitted under the Comprehensive Merit Personnel Act and District Personnel rules..

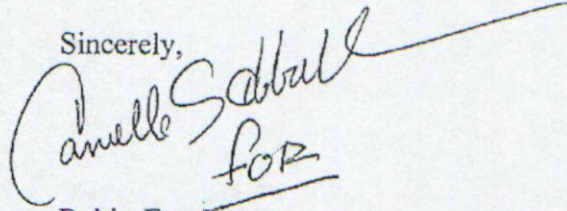
Response: The OPM officials and staff that had oversight over Eastern Market during the audit period of January 1, 2002 through December 31, 2007 are no longer employed by OPM or the District.

Unimplemented 2002 Recommendation: CPMO establish written policies and procedures governing disbursement from the Eastern Market Enterprise Fund. Further, all amounts received must be reported and recorded before making disbursements. Any disbursements must be properly supported, recorded and reported in the District's financial system. (Auditor acknowledged that CPMO has not made any disbursements from the Fund during the audit period.)

Response: Disbursements from the Fund are subject to procurement laws and regulations and budgeting. Thus, disbursements (none having been made to date) will be fully documented under the District's existing procurement and budgeting systems. Separate written policies and procedures for disbursements would be unnecessarily duplicative and would create confusion with the existing procedures.

Please do not hesitate to contact me or Camille Sabbakhan, General Counsel, at (202) 724-4400 if you need additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Camille Sabbakhan". The signature is written in dark ink and is positioned above the typed name and title.

Robin-Eve Jasper
Acting Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
GOVERNMENT OPERATIONS CLUSTER

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[REDACTED]
[REDACTED]

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

September 23, 2008

Re: Response to "Eastern Market Management and Oversight" Draft Report

Dear Ms. Nichols,

Further to the receipt of your draft report entitled "Eastern Market Management and Oversight Continues to Need Substantial Improvement", I hereby wish to inform you that I have reviewed the report and wish to respond to those recommendations whose status is classified as "NOT IMPLEMENTED".

Further, I wish to emphasize that I am only empowered to respond to those recommendations that fall under the mandate of the Office of the Chief Financial Officer.

Recommendation (pg 30) "The District's Chief Financial Officer establishes the Eastern Market Enterprise Fund consistent with all the requirements of DC Law 12-228. Money collected on behalf of Eastern Market must not be commingled with money in the General Fund. A separate Eastern Market Enterprise Fund must be established outside of the General Fund".

Response... The Eastern Market Enterprise Fund was established. It is unclear why a dedicated account was not established, as was recommended in the DC Auditor's report dated July 16 2002. I have instructed that this account be established with immediate effect. Correspondence to this effect is hereto attached.

Recommendation (pg 32) ... The CPMO must ensure that space made available to the Farmer's Line is used only by vendors who meet the definition of "farmer" as set forth in DC Law 12-228."

Response..... As the recommendation requires and implies the entity responsible for the implementation of this recommendation is the Office of Property Management has not established (OPM). This recommendation will be forwarded to the Office of Property Management for a response to the office of the City Auditor.

Recommendation pg 33....." Failure of any accountable OPM official or employee to ensure the collection of all receipts and compliance with established procedures should be held accountable to the fullest extent permitted under the Comprehensive Merit Personnel Act and District Personnel rules".

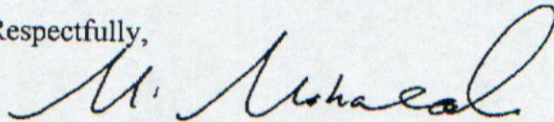
Response.....As the recommendation requires and implies the entity responsible for the implementation of this recommendation is the Office of Property Management (OPM). This recommendation will be forwarded to the Office of Property Management for a response to the office of the City Auditor.

Recommendation pg 33....." The CPMO establish written policies and procedures governing disbursements from the Eastern Market Enterprise fund. Further, all amounts received must be reported and recorded before making disbursements. Any disbursements must be properly supported, recorded and reported in the District's financial system.

Response.....Upon the establishment of the Eastern Market Enterprise Fund, the Office of Finance & Resource Management (OFRM) will collaborate with the Office of Property Management to ensure that this recommendation is complied with.

Please be further informed that I have forwarded a copy of this response to the Office of Property Management.

Respectfully,



Mohamed A Mohamed
Associate Chief Financial Officer.

Cc. Mr. Lawrence I. Perry,
Deputy Auditor, Office of the District of Columbia Auditor.

Ms. Robin- Eve Jasper,
Director, Office of Property Management (OPM)

Michael Bolden
Director of Financial Operations, GOC

Ms. Aniema Udofa,
Controller, GOC

Mr. Robert Andary,
Executive Director, Office of Integrity & Oversight, OCFO



EASTERN MARKET VENTURE, INC.

Bryan Cook, Market Manager
301.622.9300 Ext 105
301.622.9301 FAX

Historic Eastern Market
225 7th Street, SE
www.easternmarketdc.com

September 15, 2008

Office of the District of Columbia Auditor

Deborah Nichols

717 14th Street N.W., Suite 900

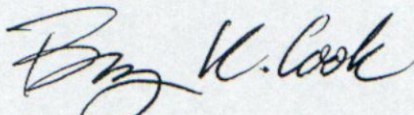
Washington, D.C. 20005

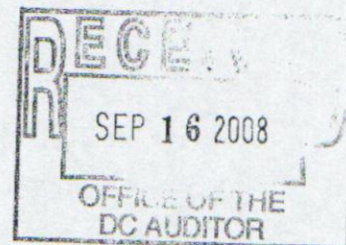
Re: Corrections to Audit Findings from Draft – September 11, 2008

Ms. Nichols,

Please find enclosed, the corrections to your draft auditor dated September 11, 2008. We would also like to request a formal meeting to discuss the inaccuracies which are prevalent throughout your audit. I will contact your office on September 16th to discuss a meeting this week.

Regards,


Bryan Cook



EASTERN MARKET MANAGEMENT AND OVERSIGHT

CORRECTIONS TO AUDIT FINDINGS

1. Allegation: EMV failed to comply with Lease Agreement and Eastern Market Law by failing to enter into written agreements with merchants.

Response: The absence of written agreements between EMV and the Eastern Market merchants is the result of express directives from the Office of Property Management ("OPM") and was done at the request and with the full knowledge, consent and endorsement of OPM.

EMV drafted written lease agreements for all merchants on numerous occasions and received comments and feedback from OPM on each such occasion. Each time the leases were distributed to merchants, the merchants raised objections to OPM and hired an attorney to voice their objections. Bowing to this pressure, OPM advised EMV to hold off on forcing merchants to execute written leases. EMV was ready, willing and able to force merchant compliance, and upon a merchant's failure to sign a written agreement EMV was ready willing and able to require one or more merchants to vacate the premises. OPM would not endorse this course of action or empower EMV to force one or more merchants to vacate the building based upon their failure to execute a written agreement. Section 5 of the Lease specifically requires that EMV obtain the District's written approval before entering into any sub-lease for any portion of the Market and OPM never provided such approval. The failure to fulfill the written contract requirement set forth in the Agreement and the Act was a decision that rested exclusively with OPM.

Post fire, and upon moving into the temporary East Hall, EMV drafted, in conjunction with OPM, temporary use and licenses agreements from all merchants. OPM has signed copies of all such agreements in its possession. The documents were for a term of one year. EMV has since drafted and delivered to OPM an extension form for such agreement which is currently under review by OPM.

In taking over management of the Eastern Market, EMV inherited all merchants previously in place. Section 5 of the Lease provides that EMV shall not be liable for any pre-existing conditions in the Market or any violations existing or having their genesis prior to EMV's involvement. The failure of existing sub-tenants to maintain necessary licenses is a condition that predates EMV's involvement. Moreover, Section 5 of the Lease states that EMV shall not be liable for the failure of any sub-tenant to comply with any applicable laws.

2. Allegation: EMV Failed to Secure Written Approval for Subcontracts:

Response: EMV obtained OPM's approval for the contract with CPL Cleaning and Sun Ventures. CPL has been a market service provider for approximately 7 years and OPM received a monthly statement detailing all payments made to this and every other vendor performing services at Eastern Market. Again, within the past 12 months, OPM provided written authorization to amend CPL's contract to provide full-time on-site porter service at the East Hall.

Contracts with Allied Waste Services and John Shorb Landscaping were 1 year contracts, terminable by EMV, and the aggregate annual fees due under such contracts at no time exceeded \$25,000. No approval for such contracts is required. Moreover, OPM receives a monthly statement from EMV detailing all payments made to these and all other vendors performing services at Eastern Market.

3. Allegation: EMV made payments to MPO Officer without written contract.

Response: EMV has an agreement with MPD for the employment of off-duty officers to provide services at the Eastern Market. The Audit first claims no written agreement and then references on page 12, footnote 20, a written agreement signed by an EMV representative dated June 19, 2003. All payments to MPO were fully disclosed to OPM and were made with the full knowledge and consent of OPM for over 6 years. The scope of services to be rendered by MPO were periodically adjusted and/or modified by agreement between MPO and the Marker Manager depending upon specific need and existing conditions at the Eastern Market.

4. Allegation: EMV did not maintain required Insurance for MPD.

Response: EMV possesses all insurance required under its Lease with the District. In response to the allegations contained in the draft audit EMV recently consulted with its insurance broker at Hilb Rogal & Hobbs who confirmed that all vendors performing services under EMV at the Eastern Market are covered and that the District is listed as an additional insured on the policy. According to EMV's insurance broker the only exclusions are in the case of assault and battery and those involving the use of handguns.

5. Allegation: EMV Corporate Charter Revoked.

Response: Eastern Market Ventures, Inc. is a valid and active non-profit corporation and is so listed on the DCRA website. Any prior lapse in good standing was the temporary result of a technical failure to file necessary forms in a timely manner and was promptly corrected and EMV was immediately restored and reinstated to active status.

6. Allegation: EMV failed to make deposits to Enterprise Fund.

Response: Only revenue in excess of \$20,000 following payment of all applicable expenses is to be paid quarterly to the Enterprise Fund and EMV complied with such requirement. As conceded in the Audit, it is unclear under the Agreement whether funds are to be transferred to the Enterprise Fund before or after expenses. The Agreement, is clear, however, that EMV is not liable for any expenses and is only required to pay such costs if funds are available in the operating account. The interpretation of the Agreement suggested by the Auditor is incorrect and would lead to the absurd result of EMV making payment to the Enterprise Fund and then immediately requesting funds from the District to pay for operating expenses. OPM and EMV agreed and operated from day one with the understanding that quarterly payments to the Enterprise Fund was intended to mean after payment of all applicable expenses. This point was further clarified in section 8 of the Third Amendment where it was made clear only the "balance" in the operating account in excess of \$20,000 was to be paid to the Enterprise Fund. The parties further added "less any additional reserves deemed advisable by the District in consultation with EMV." This additional provision was added to prevent the inefficient result of paying money to the Enterprise Fund if the parties were aware of an impending operating shortfall or other expenditure which would require the District to fund the account and make a payment to EMV shortly after a payment to the Enterprise Fund was made.

7. Allegation: EMV made Additional Payments to the Cleaning Contractor.

Response: The CPL contract provided a limited scope of services and does not require the broad-sweeping repair and maintenance responsibilities suggested by the Auditor. All additional services paid by EMV to CPL were for work and services not included in the scope of the vendor's monthly service contract. For example, repairs and/or replacements of non-operational windows, lighting and plumbing fixtures, and gutters issues are a non-recurring/non-routine repairs or a capital expense and not an obligation of the cleaning contractor pursuant to its monthly contract. Any reading by the Auditor to the contrary is simply wrong and would make the cleaning contractor responsible for virtually all non-capital repairs required at the Eastern Market.

8. Allegation: EMV failed to Obtain 3 Written Quotes for CPL renewal.

Response: EMV provided 3 written cleaning proposals to Stacy Norris of OPM and OPM provided written authorization on October 9, 2007 to extend CPL contract and add full-time porter service. Moreover, the auditor neglects to appreciate that the increased cost of the contract was a direct result of the requirement of an on-site porter at the East Hall on a full-time basis which was not part of the original service agreement resulting in a significant increase of the vendor's hourly commitment to the project. Both the scope and cost of the CPL contract was disclosed to and approved by OPM.

9. Allegation: Inadequate Controls of Farmer's Line Collections.

Response: EMV accepts no cash payments. Farmer's pay a pre-determined monthly payment and all payments are submitted with a written summary detailing the

farmer's activity at the Market. There is a list of approved farm vendors and limited amount of space which prevents vending by unauthorized parties.

10. Allegation: EMV made payments from Market Revenue which should have been paid from the Market Manager Fee.

Response: All payments by EMV for reimbursement were for the costs of meetings, meals and parking directly related to Market business and involving individuals involved in the management and operation of Eastern Market. All accounting fees paid to 3rd party professionals for the preparation of an annual tax return for the property are a market expense pursuant to section 8 of the First Amendment. Any expenses associated with EMV maintaining its corporate status were paid out of the Market Managers Fee.

9. Allegation: CPMO made payment to an Entity affiliated with EMV.

Response: The District made a payment to Site Construction, Inc. for professional services rendered in connection with the construction of a new farmer's shed. The relationship between Site Construction and EMV was fully disclosed by EMV to the District and OPM. Moreover, such payment was made pursuant to a written letter agreement signed by Aimee Occhetti of OPM, the then acting Eastern Market coordinator for OPM. The payment was not based upon an oral agreement as alleged in the Audit.

10. Allegation: MFG has not provided required documents.

Response: MFG is in default of its sublease with EMV and EMV has so advised OPM on numerous occasions. Unfortunately, OPM repeatedly prevented EMV from enforcing its sub-lease with MFG despite EMV's protestations. In addition to its failure to provide documents, MFG is frequently and significantly in arrears in the payment of rent. EMV so notified OPM on numerous occasions, provided OPM a receivables list on a regular basis and requested authority to evict the MFG on numerous occasions. On at least two occasions, EMV retained an attorney to commence eviction proceedings only to later be told by OPM to cease all enforcement action. Most recently, OPM directed EMV to stop eviction proceedings after EMV had retained legal counsel to evict MFG based upon its non-payment of rent as well as the fact that MFG's lease term had expired. Upon inquiry, EMV was advised that OPM had negotiated a deal directly with MFG. Despite repeated requests by EMV, OPM has failed and refused to advise EMV the terms of such deal. OPM has purposefully excluded EMV from its discussions with MFG and interfered with EMV's contractual relations with MFG and other sub-lessees. To date, EMV has no idea what arrangements were made directly between OPM and MFG or why OPM remains resistant to evicting a tenant who is not in compliance with its lease, is in arrears on rent and whose lease term is expired. Interestingly, OPM has previously obtained a court order permitting the removal of MFG from the Eastern Market but for reasons which remain unknown to EMV, the District and OPM have failed to seek enforcement of this Order for many years.