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# Low-Ranked Projects Secure Affordable Housing Funds

May 30, 2019

A report by the Office of the District of Columbia Auditor



## Audit Team

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[www.dcauditor.org](http://www.dcauditor.org)

May 30, 2019

The Honorable Phil Mendelson, Chairman  
Council of the District of Columbia  
1350 Pennsylvania Ave., N.W.  
Washington, DC 20004

The Honorable Anita Bonds  
Chair, Committee on Housing and Neighborhood Revitalization  
Council of the District of Columbia  
1350 Pennsylvania Avenue N.W.  
Washington, DC 20004

Dear Councilmembers:

I write to share concerns and recommendations pertaining to the procurement process that resulted in the award of \$78 million for Housing Production Trust Fund (HPTF) projects in June 2018. In brief, five of the nine proposals selected by leadership had been ranked in the bottom half of applications by staff evaluators and the final selection meant 353 fewer affordable housing units.

The HPTF is one of the District's main tools in creating and preserving affordable housing. In recent years, the District has been **increasing its investment** in the HPTF: \$130 million was proposed in the FY 2020 budget, up from \$100 million approved in FY 2019, and \$99 million approved in FY 2018.<sup>1</sup>

This report is a continuation of the work the Office of the D.C. Auditor (ODCA) produced that examined HPTF efficiency and the Department of Housing and Community Development's (DHCD) compliance with HPTF oversight requirements.<sup>2</sup> This report examines how the HPTF-funded projects were selected a year ago when the agency considered responses to the Fall 2017 Consolidated Request for Proposals (RFP) and raises red flags for ongoing and future RFPs.

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1 Actual operating budget in FY 2018 was \$154,240,683. FY 2020 Proposed Budget. See: [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/uz\\_hptf\\_chapter\\_2020m.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/uz_hptf_chapter_2020m.pdf)

2 *Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing*, March 20, 2018, See: [http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/09/HPTF.Database.Report.3.20.18.FINAL\\_-1.pdf](http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/09/HPTF.Database.Report.3.20.18.FINAL_-1.pdf). *DHCD Should Improve Management of the Housing Production Trust Fund to Better Meet Affordable Housing Goals*, March 17, 2017, See: [http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/HPTF.Final\\_Report.3.16.17.FINAL\\_.pdf](http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/HPTF.Final_Report.3.16.17.FINAL_.pdf). *The District of Columbia Housing Production Trust Fund: Revenues and Expenditures and 5-City Comparison, June 30, 2016*, See: <http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/HPTF-Report-Final.pdf>

## Red Flags Identified in DHCD's Selection of Fall 2017 HPTF Projects

As the lack of affordable housing has reached crisis levels in the District, the government's investment of valuable HPTF monies is best targeted with spending based on sound criteria. It also means that every project should be led by qualified developers, with specific and targeted plans, and solid financing, to deliver a project that is operational and compliant so that affordable housing is created and preserved as swiftly as possible to meet policymaker goals.

To select projects for HPTF funding, DHCD releases RFPs either once or twice each year and obtains affordable housing development proposals from nonprofit and for-profit entities. The method/procedures by which DHCD management selected nine projects for the Fall 2017 RFP awards of \$103 million, \$78 million of which was HPTF funding, raises serious questions about the effectiveness and transparency of DHCD's selection process. Between staff recommendations and the final selection by the Director there **was a net loss of 353 affordable units**, including a reduction by 95 units of those targeting the District's most vulnerable households earning up to 30 percent of the Area Median Income (AMI).<sup>3</sup>

## Transparent, Competitive, and Objective DHCD Project Review Protocol Breached: Timeline

Our extensive earlier audits documented that DHCD had in place a transparent, competitive, and objective process to select the most qualified projects. This process was over-ridden in the spring of 2018. ODCA identified weaknesses in the Fall 2017 Consolidated RFP process, which started in November 2017 and ended in June 2018, as detailed below.

**In November 2017**, DHCD issued its Fall 2017 RFP, a Consolidated Request for Proposals for Affordable Housing Projects.<sup>4</sup> This RFP was **transparent** in that it detailed exactly how proposals were to be evaluated, including a full range of selection criteria and points available for each category. For example, a proposal could earn up to 30 points for its Financial and Economic Feasibility or up to 30 points for Development Team Capacity and Experience, as seen in Figure 1 on the following page.

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3 This report has references to both AMI and MFI (the Washington Metropolitan Statistical Area Median Family Income), depending on which is used in our source material. When DHCD refers to MFI it explains that MFI was previously referred to as Area Median Income (AMI), for example "Inclusionary Zone 2018 Maximum Income, Rent and Purchase Price Schedule," Effective October 12, 2018, See: <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/IZ%20Income%20Schedule%20as%20of%20October%202018.pdf>

4 Mayor Muriel Bowser, Deputy Mayor for Economic Development Brian Kenner, through the DC Department of Housing and Community Development (DHCD) and its partner agencies, the DC Housing Authority (DCHA), the Department of Behavioral Health (DBH), and the Department of Human Services (DHS) release this Consolidated Request for Proposals (RFP). According to the RFP, it is the District of Columbia's primary vehicle for awarding federal and local funds for affordable housing.

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**Figure 1: Housing Production Trust Fund Scoring Process & Criteria Details**

**1. Financial and Economic Feasibility (maximum 30 points)**

The Financial and Economic Feasibility score is a composite of several factors, listed below. Applications will be scored on the sub-criteria below, and the scores will be summed. All projects that meet the Threshold Eligibility Requirements and proceed to the Scoring phase must be financially and economically feasible. Most points in this section relate to how advanced a project is in the predevelopment process. Projects that are closer to being shovel ready are considered more financially and economically feasible because rates, terms, and costs are more certain and there is less possibility for delay or disruption between project selection and closing.

**a. Form 202 – Application for Financing (maximum 10 points)**

- ❑ **10 points** = The Form 202 contains a realistic set of sources and uses, development budget, and pro forma operating budget and is based on solid assumptions (operating expenses, development costs, vacancy rate, debt service coverage ratios, LIHTC raise rates, funding levels for reserves, etc.).

Source: Fall 2017 RFP, a Consolidated Request for Proposals for Affordable Housing Projects

The RFP further explained that DHCD’s Development Finance Division (DFD) was responsible for conducting the staff-level review of the proposals and presenting recommendations to the Director for final selection, based on the scores received by each applicant. According to DHCD’s website, DFD “plays a prominent role in helping the agency achieve its annual multifamily housing production goals.” The RFP explains that:

Applications, scores, and tentative Development Finance Division (DFD) recommendations will be forwarded to an interagency review panel of District government partners for review and prioritization. Projects that the panel finds meet the eligibility requirements and score competitively compared with other proposed projects of similar type will be recommended to DHCD for funding. DHCD will conduct the final review of applications and will select projects for further underwriting.<sup>5</sup>

However, the RFP also goes on to state: “Final selection decisions will be made by the DHCD Director.”<sup>6</sup>

**Between February 2018 and April 2018**, DFD directed a comprehensive multi-part review of the 28 proposals that responded to the RFP. Based on information gathered from DFD staff during our previous audit, the

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5 DHCD Fall 2017 Request for Proposals, Page 9-10, See: <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/DHCD%20Fall%202017%20Affordable%20Housing%20Consolidated%20Request%20for%20Proposals%20%28RFP%29.pdf>

6 DHCD Fall 2017 Request for Proposals, Page 10.

process involved multiple levels of review by DFD staff and supervisors, and subject matter experts if needed, to determine proposals' compliance with threshold eligibility requirements, such as, whether the proposal: contained an eligible project type (number of units for targeted AMI), had site control of the proposed development, contained financing letters, and so on. After a month and a half, DFD notified the sponsors of eight proposals that they did not meet the threshold requirements and would not advance to the scoring phase, the second part of the review process.

The next phase, the scoring phase, was similarly extensive: approximately 10 DFD staffers were to be involved in scoring. According to the RFP, during the scoring phase all proposals were to be competitively evaluated, rated, and ranked based on underwriting and scoring selection criteria, established in accordance with federal law and the District's housing priorities and needs. The RFP contained a Selection Criteria Summary which showed all of the criteria for the threshold eligibility as well as all of the scoring criteria and potential points.

DFD's scoring phase appeared to be designed to be a **competitive** method for ensuring only the most qualified developers were selected and the projects delivering the most public benefit (i.e. deeply affordable units) would be selected.<sup>7</sup> Additionally, DFD management reported that they reviewed all scores and conducted spot checks to ensure consistency.

DFD added multiple internal controls to ensure the process was **objective**. For example, one DFD staffer would focus on one aspect of the scoring criteria so that all proposals would be subjected to the same standard of review. Another control was that when criteria had room for subjectivity, two scorers were assigned, and their scores were either averaged or discussed and consensus reached.

It is also worth noting that during our earlier HPTF audits we were impressed by the control environment of DFD. For example, key processes were flowcharted, there was an emphasis on supervision, and its detailed handbook for project management and underwriting was written from a risk management approach (identifying and mitigating the specific risks inherent in each stage of the process).

In addition to its internal review, DFD facilitated an interagency review panel with the D.C. Housing Finance Agency, D.C. Housing Authority, Department of Human Services and Department of Behavioral Health to discuss scores and tentative recommendations based on the Department's funding constraints.

- **In May 2018**, DFD recommended the nine highest-scoring projects to the DHCD Director for funding. The projects represented a mix of four preservation projects, three production projects, and two projects that were both production and preservation. These nine projects were to produce or preserve 1,125 units of affordable housing, including 143 Permanent Supportive Housing (PSH) units.<sup>8</sup> Following is Figure 2, a list of the projects DFD recommended to the DHCD Director including location, total number of units, and level of affordability:

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<sup>7</sup> Based on ODCA interviews and review of DFD procedures, scoring sheets, and the RFP.

<sup>8</sup> The Fall 2017 RFP explains PSH as "Supportive housing for an unrestricted period of time for individuals and families who were once homeless and continue to be at imminent risk of becoming homeless, including persons with disabilities as defined in 24 C.F.R. 582.5, for whom self-sufficient living may be unlikely and whose care can be supported through public funds. (Homeless Services and Reform Act of 2015)," page 14.

**Figure 2: Nine Highest Scoring Projects Recommended by DFD to DHCD Director for Funding**

| Project Name <sup>9</sup> | Ward | Total Units  | 30% AMI    | 50% AMI    | 60% AMI    | 80% AMI   | PSH        |
|---------------------------|------|--------------|------------|------------|------------|-----------|------------|
| A                         | 4    | 54           | 54         |            |            |           | 54         |
| B                         | 7    | 166          | 17         | 149        |            |           | 17         |
| C                         | 4    | 121          | 31         | 77         | 13         |           | 24         |
| D                         | 8    | 323          | 10         | 157        | 142        | 14        | 10         |
| E                         | 5    | 49           | 4          | 8          | 37         |           | 0          |
| Spring Flats -Senior      | 4    | 88           | 30         | 44         | 14         |           | 14         |
| Hanover Courts Apartments | 8    | 82           | 9          | 41         | 32         |           | 4          |
| Randle Hill Apartments    | 8    | 195          | 20         | 127        | 28         | 20        | 20         |
| SOME – Anna Cooper House  | 2    | 47           | 47         |            |            |           | 0          |
| <b>Total</b>              |      | <b>1,125</b> | <b>222</b> | <b>603</b> | <b>266</b> | <b>34</b> | <b>143</b> |

Source: Fall 2017 Consolidated RFP Project Selection Recommendations

**On June 13, 2018**, Mayor Bowser issued a press release publicly announcing that nine projects selected from the Fall 2017 RFP had been awarded \$103 million: five of them, highlighted in Figure 3 on the following page, were not among the highest scoring projects that had been recommended by DFD.<sup>10</sup>

<sup>9</sup> Projects A-E were not selected for the Fall 2017 RFP cycle, thus ODCA is not identifying them.

<sup>10</sup> “Mayor Bowser Announces \$103 Million Investment in Affordable Housing,” June 13, 2018. See: <https://dhcd.dc.gov/release/mayor-bowser-announces-103-million-investment-affordable-housing>

**Figure 3: Projects Awarded From 2017 Fall RFP<sup>11</sup>**

| Project Name                                                                         | Ward | Total Units | 30% AMI    | 50% AMI    | 60% AMI    | 80% AMI   | PSH       |
|--------------------------------------------------------------------------------------|------|-------------|------------|------------|------------|-----------|-----------|
| Mary's House<br>Developer: Northern Real Estate Urban Ventures, LLC                  | 7    | 15          | 3          | 10         |            | 2         | 3         |
| 3500 East Capitol Street NE (Phase II)<br>Developer: MidAtlantic Realty Partners LLC | 7    | 95          | 5          | 90         |            |           | 5         |
| 1100 Eastern Ave NE<br>Developer: Neighborhood Development Company                   | 7    | 63          | 13         | 50         |            |           | 13        |
| Anacostia Gardens Apartments<br>Developer: The NHP Foundation                        | 7    | 99          |            | 9          | 90         |           | 0         |
| Petworth Station Feb. 2018<br>Developer: WC Smith                                    | 4    | 88          |            | 10         | 78         |           | 1         |
| Spring Flats<br>Developer: Spring Flats MD, LLC                                      | 4    | 88          | 30         | 44         | 14         |           | 14        |
| Hanover Courts Apartments<br>Developer: EquityPlus Manager LLC                       | 8    | 82          | 9          | 41         | 32         |           | 4         |
| Randle Hill Apartments<br>Developer: Community Housing Inc. (CPDC)                   | 8    | 195         | 20         | 127        | 28         | 20        | 20        |
| SOME – Anna Cooper House<br>Developer: SOME, Inc.                                    | 2    | 47          | 47         |            |            |           | 0         |
| <b>Total</b>                                                                         |      | <b>772</b>  | <b>127</b> | <b>381</b> | <b>242</b> | <b>22</b> | <b>60</b> |

**Note:** Highlighted projects were not among the highest scoring projects that had been recommended by DFD.

**Sources:** Press Release: “Mayor Bowser Announces \$103 Million Investment in Affordable Housing,” June 13, 2018; Fall 2017 Consolidated RFP Project Selection Recommendations

One thing is immediately clear from these two lists: the projects recommended by DFD would have created more affordable units than the final projects selected—a difference of 353 units. There were also significantly fewer units (95 units) for households earning up to 30 percent AMI and 222 fewer units for households earning up to 50 AMI. In fact, as shown in Figure 4 on the following page, there were reductions in every category when DFD’s recommended projects were replaced with the Director’s final selection.

<sup>11</sup> The number of units for each AMI category was not detailed in the press release and was obtained from the recommendations made by DFD.

**Figure 4: Affordable Units in Final Project List**

|                                 | Total Units | 30% AMI | 50% AMI | 60% AMI | 80% AMI | PSH  |
|---------------------------------|-------------|---------|---------|---------|---------|------|
| <b>DFD Recommended Projects</b> | 1,125       | 222     | 603     | 266     | 34      | 143  |
| <b>Final Projects Awarded</b>   | 772         | 127     | 381     | 242     | 22      | 60   |
| <b>Unit Decrease</b>            | 353         | 95      | 222     | 24      | 12      | 83   |
| <b>Percentage Change</b>        | -31%        | -43%    | -37%    | -9%     | -35%    | -58% |

Source: ODCA Analysis

The results of the 2017 RFP process run counter to the goal stated in the RFP, which in the first few pages notes:

The greatest gap between the need for and supply of affordable housing is among households with the lowest incomes, those earning no more than 30 percent of the U.S. Department of Housing and Urban Development (HUD) Median Family Income (MFI, currently \$110,300 annually for a family of four).<sup>12</sup>

It is important to note that of the 353 affordable units that were lost as a result of the decisions made by DHCD officials, 317 of those units were intended for the poorest District households. Moreover, the officials' decisions go against DHCD's goal of placing "much greater emphasis on 30 and 50 percent of the area median family income (MFI) units."<sup>13</sup>

Historically, DHCD has struggled with complying with requirements to target HPTF dollars to projects that serve the most vulnerable households.<sup>14</sup> Our 2017 audit found that DHCD did not comply with the annual spending requirements for projects targeting extremely low-income (30 percent AMI) and very low-income households (50 percent AMI) in 2013, 2014, and 2015.<sup>15</sup>

There also was a significant decrease in the number of PSH units created in the DFD recommended list (143 units) and the list that was ultimately approved (60 units). This is concerning as the RFP was to have a "special emphasis on creating Permanent Supportive Housing (PSH) for individuals and families who were once homeless and continue to be at imminent risk of homelessness."<sup>16</sup>

<sup>12</sup> Again, MFI is now being used in place of AMI. DHCD Fall 2017 Request for Proposals, Page 4.

<sup>13</sup> DHCD Performance Oversight Responses, D.C. Council Performance Oversight 2019, Page 55, See: <http://dccouncil.us/wp-content/uploads/2019/02/dhcd19.pdf>

<sup>14</sup> The HPTF statutory requirement that at least 80 percent of project delivery expenditures go to units for households earning no more than 50 percent of AMI, including 40 percent for households earning no more than 30 percent of MFI. Page 4 of the DHCD Fall 2017 Request for Proposals.

<sup>15</sup> *DHCD Should Improve Management of the Housing Production Trust Fund to Better Meet Affordable Housing Goals*, March 17, 2017, Page 27, See: [http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/HPTF.Final\\_Report.3.16.17.FINAL\\_.pdf](http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/HPTF.Final_Report.3.16.17.FINAL_.pdf)

<sup>16</sup> DHCD Fall 2017 Request for Proposals, Page 4.

In terms of the location of projects, **Wards 4, 5, and 8 each lost a project** in the final decision. This resulted in no projects in **Ward 5**. Additionally, 4 of the 5 projects selected that were not recommended by DFD were in Ward 7.

In addition, when comparing the overall scores for the five final projects to the scores of the original five recommended projects, we observed that projects with lower scores were ultimately selected over projects with higher scores. On average, the projects awarded funds earned roughly 10 fewer percentage points than the recommended projects, as detailed in Figure 5. Not only did the five final projects have lower rankings, but two were the lowest ranked of the 20 projects ranked by DFD staff. It is worth noting that the five DFD recommended projects that were not selected in 2018 nevertheless **were all awarded** funds in response to the Summer 2018 RFP, which the Mayor announced in a March 19, 2019, press release.<sup>17</sup>

**Figure 5: Rankings by DHCD’s Development Finance Division  
of Projects Not Selected and Projects Selected**

| Projects That Were Not Selected | Ranking out of 20 | Projects That Were Selected            | Ranking out of 20 |
|---------------------------------|-------------------|----------------------------------------|-------------------|
| A                               | 2                 | Anacostia Gardens Apartments           | 11                |
| B                               | 3                 | Petworth Station Feb. 2018             | 12                |
| C                               | 4                 | 1100 Eastern Ave NE                    | 15                |
| D                               | 5                 | Mary’s House                           | 19                |
| E                               | 6                 | 3500 East Capitol Street NE (Phase II) | 20                |

Source: Fall 2017 Consolidated RFP Project Selection Recommendations

## Requests for Justification for Affordable Housing Project Selections

In March 2019, ODCA received confidential information regarding the discrepancies between DFD’s recommendations and the proposals that were selected by the DHCD Director. We requested from DHCD written documentation to explain the justification for the final decisions to award funding to projects that received lower rankings than others that were not funded in 2018. DHCD’s Director Polly Donaldson explained that 100 Local Rent Supplement Program (LRSP) vouchers were made available and “was a primary driver of my decision to modify the recommendations made by the staff.” Yet, DHCD declined to provide documentation to detail this process which resulted in five projects that were replaced with lower-scoring projects that produced or preserved fewer affordable housing units. This exchange of correspondence is included in Appendix A, which also includes subsequent ODCA correspondence with DHCD related to the 2017 RFP process.

<sup>17</sup> “Mayor Bowser Makes Historic \$138 Million Investment in Affordable Housing,” March 19, 2019, See: <https://mayor.dc.gov/release/mayor-bowser-makes-historic-138-million-investment-affordable-housing>

The D.C. Auditor issued a subpoena to DHCD for the information on April 25, 2019. DHCD responded on April 29, 2019, with another letter but without providing the information and claimed a deliberative process privilege, a basis for withholding documents or testimony in litigation and a category of exemption under the District’s Freedom of Information Act, which does not apply when providing records to ODCA.<sup>18</sup> The agency’s justifications for its refusal to provide information was meritless because Congress, through the Home Rule Act, provided ODCA access “to all books, accounts, records, reports, findings, and all other papers, things or property belonging to or in use by any department, agency, or instrumentality of the District government and necessary to facilitate the audit.”<sup>19</sup>

DHCD has to date refused to provide a final and complete signed Decision Memorandum requested in the subpoena. Nevertheless, ODCA is in possession of the memorandum, which includes the information on the proposals shared above. We were able to meet our own quality control requirements by otherwise authenticating the material received earlier and did so without resorting to a motion to enforce the subpoena in D.C. Superior Court.

## Addressing a Lack of Internal Controls

This 2018 decision-making process raises serious concerns about HPTF integrity and transparency. Due to the issues observed in the Fall 2017 RFP process, we have concerns that the Summer 2018 RFP process may not have been conducted properly and that the forthcoming Summer 2019 Consolidated RFP that the Mayor announced in a March 2019 press release may not be conducted properly.<sup>20</sup>

*“Management lead by an example that demonstrates the organization’s values, philosophy, and operating style.” –Comptroller General of the United States*

While we recognize that DHCD’s current practice, as stated in both the 2017 RFP and the most recent 2018 RFP, is that the final selection decision is to be made by the DHCD Director, **this decision should be supported by a written justification.**<sup>21</sup> Principle 1 of the Standards for Internal Control in the Federal Government is to “Demonstrate Commitment to Integrity and Ethical Values.”<sup>22</sup> This principle is to be supported in any agency by the tone at the top, standards of conduct, and adherence to standards of conduct.<sup>23</sup> The agency’s failure to support the rationale for the selection, as well as provide proof of their adherence to the standards, signals a weakness in the leadership’s commitment to program integrity.

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18 See D.C. Code § 1-301.44c. <https://code.dccouncil.us/dc/council/code/sections/1-301.44c.html>

19 D.C. Code § 1-204.55.

20 “Mayor Bowser Makes Historic \$138 Million Investment in Affordable Housing,” March 19, 2019, See: <https://mayor.dc.gov/release/mayor-bowser-makes-historic-138-million-investment-affordable-housing>

21 Summer 2018 RFP Consolidated Request for Proposals for Affordable Housing Projects, Issue Date: July 31, 2018, Closing Date: September 28, 2018. Page 10, see: [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page\\_content/attachments/DC%20DHCD%20Summer%202018%20Affordable%20Housing%20Consolidated%20Request%20for%20Proposals%20%28RFP%29.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/DC%20DHCD%20Summer%202018%20Affordable%20Housing%20Consolidated%20Request%20for%20Proposals%20%28RFP%29.pdf)

22 *Standards for Internal Control in the Federal Government*, Comptroller General of the United States, Page 22, See: <https://www.gao.gov/assets/670/665712.pdf>

23 Ibid.

We also recognize that while it is reasonable for a Director to have some discretion, there should be criteria to guide that discretion. This is especially important in this case where the Director made not just one or two project replacements but overrode the results of a standard and objective review process for more than half of the final projects. The failure to justify and provide documentary support for this dramatically different outcome points to the need for stronger controls over the process.

DHCD, under certain circumstances, is one of only a handful of District government agencies that is not subject to the majority of provisions of the Procurement Practices Reform Act.<sup>24</sup> The discretion granted to the DHCD Director and described in the RFP itself is apparently not memorialized in either the D.C. Code or the D.C. Municipal Regulations. Given the substantial public investment not only in dollars but also in hope in the HPTF to address the District's need for affordable housing, the HPTF award process needs greater controls and transparency.

***"Management establishes standards of conduct to communicate expectations concerning integrity and ethical values." – Comptroller General of the United States<sup>25</sup>***

Based on our review we recommend that:

1. The D.C. Council enact legislation to increase the transparency of the affordable housing Request for Proposals (RFP) selection process by modifying D.C. Code to include requirements that address when and how the DHCD Director can exercise discretion in the RFP process, and require public release of the final selection criteria, evaluators' rating sheets, DHCD's Development Finance Division (DFD) staff's recommendations to the Director, final and signed Decision Memorandum, and the Director's written justification for awarding projects that were not recommended by DFD.

My staff and I are available to answer any questions you may have about these issues.

Thank you.



Kathleen Patterson  
District of Columbia Auditor

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24 D.C. Code § 2-351.05(c)(16) states that the procurement provisions of the D.C. Code, other than the requirement for Council review of contracts in excess of \$1 million and multiyear contracts, shall not apply to the "procurement of goods and services directly related to the production of permanent supportive housing units for which the District has obligated funding pursuant to an agreement between any combination of the following agencies:

- (A) District of Columbia Department of Housing and Community Development;
- (B) District of Columbia Housing Finance Agency;
- (C) District of Columbia Housing Authority;
- (D) Department of Human Services;
- (E) Department of Behavioral Health; and
- (F) Any other agency that has entered into an agreement with any of the agencies listed in subparagraphs (A) through (E) of this paragraph directly related to the production of permanent supportive housing"

25 *Standards for Internal Control in the Federal Government*, Comptroller General of the United States, Page 23, See: <https://www.gao.gov/assets/670/665712.pdf>.

## **Appendix A**

Note: The names of projects that were not awarded funds for the Fall 2017 RFP cycle are redacted.

March 26, 2019

Ms. Polly Donaldson  
Director  
Department of Housing and Community Development  
1800 Martin Luther King Avenue S.E.  
Washington, DC 20020

Dear Director Donaldson:

I write concerning the effectiveness and transparency of the Department of Housing and Community Development (DHCD) Housing Production Trust Fund (HPTF). I am in receipt of copies of various internal DHCD documents related to the evaluation of responses to the Fall 2017 Consolidated request for proposals (RFP) dated November 30, 2017.

We understand that DHCD's Development Finance Division (DFD) is responsible for conducting the staff-level review and presenting recommendations to you for final selection, based on the scores received by each applicant. The RFP states, "Final selection decisions will be made by the DHCD Director. No project that fails to meet one or more of the Threshold Eligibility Requirements will be selected. In general, it is DHCD's goal to provide funding to those projects that provide the greatest public benefit while maximizing the impact of public resources. DHCD reserves the right to disqualify projects for justifiable reasons that were not contemplated when the selection criteria were established."

Based on my office's review of the internal DHCD documents, the authenticity of which we have not independently confirmed, you did not award HPTF funding to five of the nine projects recommended by DFD. While I understand that the Director of DHCD has discretion to override competitive selection processes under certain circumstances, rejecting objective selection criteria without sufficient justification can raise questions about DHCD's independence and transparency.

To allow my office to make a decision on whether to initiate an additional audit of the HPTF, I request that DHCD provide all documents relating to DFD's recommendations for award, the final and complete signed Decision Memorandum and the final selection criteria used to select the nine projects from among those responsive to the RFP. This documentation should include any comments or recommendations from staff or management, as well as the justification for the final selections, including why you awarded funding for the following projects that were not recommended by the DFD:

- Mary's House
- 3500 East Capitol Street N.E.
- 1100 Eastern Ave N.E.
- Anacostia Gardens Apartments
- Petworth Station

In addition, please provide documentation to support your decision to not award HPTF funds to the following projects that were recommended by DFD:

[REDACTED]

We ask that this information be provided by April 2, 2019. Please do not hesitate to contact me at [kathy.patterson@dc.gov](mailto:kathy.patterson@dc.gov) or Deputy Auditor Julie Lebowitz at [julie.lebowitz@dc.gov](mailto:julie.lebowitz@dc.gov) if you have questions.

Thank you for your assistance in ensuring the effective and transparent management of one of the District's most vital affordable housing programs.

Sincerely yours,



Kathleen Patterson  
District of Columbia Auditor

April 22, 2019

Ms. Polly Donaldson  
Director  
Department of Housing and Community Development  
1800 Martin Luther King Avenue S.E.  
Washington DC 20020

By courier and email

Dear Director Donaldson:

I write to follow up on my letter of March 26 which requested specific information related to the Housing Production Trust Fund and the evaluation of responses to the Fall 2017 Consolidated Request for Proposals dated November 30, 2017. A copy of the letter follows. I requested the information by April 2, 2019.

On April 2, 2019, I received an email response from Deputy Director Allison Ladd stating that a response would be forthcoming by "the end of the week." I followed up by email to Ms. Ladd seeking a response on April 9, 2019, and in an email to you, copying, Ms. Ladd, on April 18, 2019. I have not received a response to either email query.

I write by letter today to let you know that I would like to receive the requested information by close of business Wednesday, April 24, 2019. If I do not receive the information by that time and date, it is my intention to seek the information by subpoena pursuant to DC Code § 1-301.171:

The District of Columbia Auditor may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records, including books, papers, documents, and any other evidence relating to any matter under investigation by the District of Columbia Auditor.

Thank you for your attention to this matter.

Sincerely yours,



Kathleen Patterson  
District of Columbia Auditor

Attachment



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**



**VIA ELECTRONIC MAIL AND COURIER**

April 24, 2019

Ms. Kathleen Patterson, Auditor  
Office of the District of Columbia Auditor  
717 14<sup>th</sup> St, N.W., Suite 900  
Washington, DC 20005

Re: DHCD Response to ODCA Request for Information

Dear Ms. Patterson,

This letter is in response to your request of information dated March 26, 2019, regarding the Housing Production Trust Fund (HPTF) and the Fall 2017 Consolidated Request for Proposals arising from concerns you have around effectiveness and transparency of the HPTF.

As you may know, the demand for affordable housing financing in the District drastically exceeds the supply of available funds. Since January 2015, applicants responding to each round of DHCD Request for Proposals (RFPs)/Notice of Funding Availability (NOFAs) have requested three to four times the amount of available funds. DHCD releases a RFP/NOFA up to two times a year. The RFP/NOFA includes three types of review: 1) threshold eligibility requirements, 2) underwriting scoring, and 3) prioritization scoring. Selection and scoring criteria are detailed and publicly available in the RFP/NOFA. **All projects must meet the threshold eligibility requirements** prior to being considered for underwriting and prioritization scoring.

Once the RFP/NOFA is closed, staff from the DHCD Development Finance Division (DFD) conduct a review of the threshold eligibility criteria for all submitted applicants. Applicants whose proposals contained potential deficiencies are notified and given 24 hours to cure those deficiencies. Based upon that threshold eligibility review process, DFD management notifies the Director of DHCD of the applicants that met threshold and the applicants that did not meet threshold; the applicants that did not meet threshold are notified in writing.

For the applicants that meet threshold eligibility, the DFD staff reviews the applications against the underwriting and prioritization scoring criteria. Once the DFD staff complete their review, DFD management reviews the applications and scoring to help reach consensus in areas where scorers had different assessments. Once the DFD management completes their review, DFD meets with an Interagency Review Panel to discuss the applications, scores, tentative recommendations, and funding constraints. Representatives from the DC Housing Finance Agency, Department of Human Services, Department of Behavioral Health, DC Housing

Authority, Department of Consumer and Regulatory Affairs, and Department of Energy and Environment are all parties to the Interagency Review Panel.

Once this process is complete and after the Interagency Review Panel meets, DFD management makes recommendations to the Director based upon the stated review and assessment process. It is at this time that the Director reviews the recommendations and considers any new information that the Director may have learned about goals, priorities, fund availability, etc., since the release of the RFP/NOFA was usually at least four months prior. Per the RFP/NOFA, all final decisions regarding the selection of projects are made by the Director, and the process and information provided up to that time are recommendations only.

Drawing upon my extensive experience, expertise, and background in affordable housing finance, the production and preservation of affordable housing, and my awareness of the statutes and regulations that govern the RFP/NOFA process, I make decisions that I determine are in the best interest of the District. As Director of DHCD, I am the chief steward of DHCD's affordable housing resources and Mayor Bowser entrusted me with the duty to ensure that our financial resources are used in the most effective and prudent manner.

In regards to the Fall 2017 Consolidated RFP, an unanticipated funding circumstance arose specifically related to the availability of Local Rent Supplement Program (LRSP) vouchers. At the time of the original review and recommendation by DFD, we had been given guidance from the DC Housing Authority (DCHA) that there were no LRSP vouchers available to allocate to projects in the 2017 Fall RFP/NOFA. However, the DFD recommendations included a request for 180 LRSP vouchers. An additional \$51.4 million in HPTF would have been needed for operational subsidy, resulting in fewer projects being funded and fewer units being produced and preserved for families in the District during a time when demand for affordable housing is high.

Approximately a week after DFD completed its review and recommendations, I learned new information that would modify the list of projects recommended for selection by DFD. DCHA informed me that approximately 100 LRSP vouchers would be made available to DHCD for the 2017 Fall RFP/NOFA. DCHA stated that the reason they were newly comfortable allocating approximately 100 LRSP vouchers under DHCD RFP/NOFA was that the DC Council agreed to fund additional LRSP vouchers in the FY19 Budget. This new information allowed the prioritization and categorization of the projects based upon the amount of requested LRSP vouchers and was a primary driver of my decision to modify the recommendations made by the staff.

Since 2015, for those applications not selected, each applicant is offered a debriefing with the DHCD DFD team to learn how the application could be improved for resubmission in future RFP/NOFAs. Please know that affordable housing projects typically submit an application two or three times prior to being selected for funding, and as such, all five projects listed in your letter of March 26, 2019 that were not funded in the 2017 RFP/NOFA were selected for funding in the next RFP/NOFA round.

At all times I exercise my discretion in an impartial manner, without favoritism based on any impermissible grounds. DHCD's organizational statute, Reorganization Plan No 3 of 1975, the

Community Development Act of 1975, as amended, D.C. Official Code § 6-1001 *et seq.*, Mayor's Order 2015-086, and the RFP/NOFA preserve the Director's discretion in this RFP process, as in most grant programs, where decisions are informed by, not governed by, the scoring panels. I have mentioned some reasons already, but others may include:

- Different applications may be graded by different panelists or panels, some of whom may be tougher graders than others.
- Some entities may be excellent at writing proposals, but we may know them to be less strong at delivering results. Our experience may inform final decisions.
- On the other hand, some excellent, historic partners may not be quite as adroit at putting together proposals, and their panel scores may not reflect the results we know the entity is likely to deliver.

Going forward and as DHCD releases RFPs/NOFAs in the future, we must balance solid policy and financial realities specifically relevant at the time of selection -- like desires to geographically disperse winning proposals; to focus on neighborhood synergies outside of the DHCD funding opportunity; to vary the type of project from production to preservation; to accommodate senior housing or larger family size units; to mix both low-rise and townhouse construction or to transform a vacant property or dilapidated building that is a neighborhood eyesore into affordable housing. The panel's scores may not take the bird's eye view of the whole portfolio and consider what would be most effective and efficient, in combination and in line with the administration's priorities and needs across the city.

In closing, DHCD appreciates the review of its operations and will continue to try to make the best use of the generous resources we are provided to achieve our housing goals, and to improve our transparency to our stakeholders and the community. Should it be helpful, I would welcome the opportunity to meet with you to discuss the RFP/NOFA process and to answer any remaining questions you may have. Please do not hesitate to contact me directly at 202-442-7215 or Allison Ladd, Deputy Director, at 202-316-7583 should you have questions or require additional information.

Sincerely,



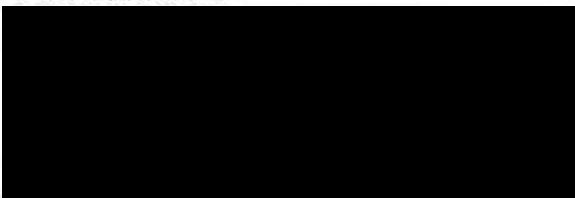
Polly Donaldson  
Director

cc: Allison Ladd, Deputy Director, DHCD  
Betsy Cavendish, Mayor's General Counsel  
Brian Kenner, Deputy Mayor, Planning and Economic Development

**SUBPOENA DUCES TECUM**

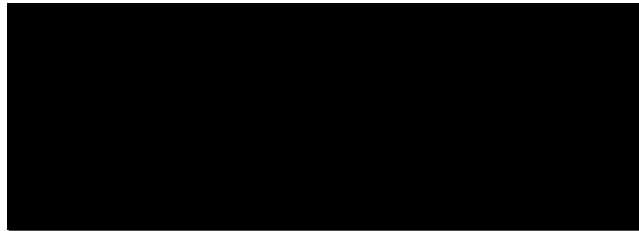
**TO:** Ms. Polly Donaldson or Custodian of Records  
Department of Housing and Community Development (DHCD)  
1800 Martin Luther King Jr. Avenue SE  
Washington, DC 20020

*Pursuant to D.C. Code § 1-204.55 and § 1-301.171, **YOU ARE HEREBY COMMANDED** to produce and/or otherwise provide to the Office of the District of Columbia Auditor (ODCA), 717 14<sup>th</sup> Street, N.W., 9<sup>th</sup> Floor, Washington, DC, 20005, at **10:00 a.m.** on Monday, April 29, 2019, the following:*

1. Any and all records relating to the DHCD Development Finance Division's (DFD) evaluation of responses to the Fall 2017 Consolidated Request for Proposals (RFP), including but not limited to:
  - The final selection criteria used by DHCD employees assigned to evaluate the responses to the RFP (hereinafter, "Evaluators");
  - Evaluators' rating sheets, written comments, recommendations, and any other documentation indicating the opinions, evaluations, comments, and recommendations of the evaluators relating to the following projects:
    - Mary's House
    - 3500 East Capitol Street N.E.
    - 1100 Eastern Ave N.E.
    - Anacostia Gardens Apartments
    - Petworth Station
    - 
    - 
    - 
    - 
    - 
    -
  - Recommendations for award, often referred to as a Decision Memorandum, DFD staff recommendations, and DFD recommendations memo.
2. The final and complete signed Decision Memorandum for the Fall 2017 Consolidated RFP.

3. Any and all records related to the final selection criteria used by the DHCD Director to select from among those responsive to the Fall 2017 Consolidated Request for Proposals RFP.

- Specifically, with respect to the following projects, provide any comments, justification and/or recommendations from DHCD staff or other District of Columbia officials relating to the final selections, including why you awarded funding for the following projects that were not recommended by the DFD:
  - Mary's House
  - 3500 East Capitol Street N.E.
  - 1100 Eastern Ave N.E.
  - Anacostia Gardens Apartments
  - Petworth Station
- In addition, please provide any and all records, including any comments, justification and/or recommendations from DHCD staff or other District of Columbia officials relating to the final selections, to support your decision to not award HPTF funds to the following projects that were recommended by the DFD:



*Personal appearance is not required if the requested documents are provided to Kathleen Patterson or Amy Bellanca at the address listed above on or before the aforementioned date and time.*

*The information requested herein is necessary in the performance of the responsibility of the Office of the District of Columbia Auditor under D.C. Code § 1-204.55, to conduct a thorough audit of the accounts and operations of the District government. Additionally, D.C. Code § 1-301.171 grants the Auditor subpoena power.*

***Refusal to obey this subpoena will result in the institution of enforcement proceedings within the Superior Court of the District of Columbia. Any questions you have concerning this subpoena may be directed to Amy Bellanca, General Counsel, at (202) 727-8986.***

**IN TESTIMONY WHEREOF**

*Kathleen Patterson, District of Columbia Auditor,  
has hereunto set her hand on this 25 day of April 2019.*





**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**



**VIA ELECTRONIC MAIL AND COURIER**

April 29, 2019

Ms. Kathleen Patterson, Auditor  
Office of the District of Columbia Auditor  
717 14<sup>th</sup> St, N.W., Suite 900  
Washington, DC 20005

Re: DHCD Response and Objection in Part to ODCA Subpoena Duces Tecum

Dear Ms. Patterson,

This letter is in response to the Subpoena Duces Tecum you issued to the Department of Housing and Community Development ("DHCD" or "Department") on April 25, 2019. Many of the records enumerated in the subpoena would require the disclosure of privileged information, falling under the deliberative process exemption and thus, the Department objects to their production. More details regarding the Department's response are given below.

**Subpoena Request 1:**

Any and all records relation to the DHCD Development Finance Division's (DFD) evaluation of responses to the Fall 2017 Consolidated Request for Proposals (RFP), including but not limited to:

- The final selection criteria used by DHCD employees assigned to evaluate the responses to the RFP (hereinafter, "Evaluators");
- Evaluators' rating sheets, written comments, recommendations, and any other documentation indicating the opinions, evaluations, comments, and recommendations of the evaluators relating to the following projects:
  - o Mary's House
  - o 3500 East Capitol Street N.E.
  - o 1100 Eastern Ave N.E.
  - o Anacostia Gardens Apartments
  - o Petworth Station



- Recommendations for award, often referred to as Decision Memorandum, DFD staff recommendations, and DFD recommendations memo.

Subpoena Request 1 Response:

Enclosed, please find records relating to DFD's evaluation of responses to the Fall 2017 Consolidated RFP. Those records include the final selection criteria used by evaluators that is given in the RFP itself.

The Department objects to the production of evaluator rating sheets, written comments, recommendations, and any other documentation indicating the opinions, evaluations, comments, and recommendations of the evaluators related to any DFD project as they fall squarely under the deliberative process privilege.<sup>1</sup> Those records are produced as part of the Department's selection making process and exemplify the deliberative process. Evaluators review each project pursuant to the criteria given in the RFP and make eventual recommendations for selection. The individual evaluations and recommendations of DFD staff ultimately help inform the Director's selection of projects. Thus, the privilege applies as they were produced before a final decision was made and are part of the candid back-and-forth between DHCD staff that occurs during the selection process.

For the same reasoning, the Department objects to the production of "recommendations for award, often referred to as Decision Memorandum, DFD staff recommendations, and DFD recommendations memo." As described above, DFD staff recommendations are deliberative and created by DFD staff to help inform the Director's final selection of projects. DHCD's organizational statute, Reorganization Plan No 3 of 1975, the Community Development Act of 1975, as amended, D.C. Official Code § 6-1001 *et seq.*, Mayor's Order 2015-086, and the RFP/NOFA preserve the Director's discretion in this RFP process, as in most grant programs, where decisions are informed by, not governed by, the scoring panels.

Staff recommendations are not the final decision and their disclosure would cool the candid discussion and evaluation necessary amongst DFD staff to have an effective and robust RFP process. Scorers and bidders have long operated under the presumption that their scores and bids – if not awarded – would be confidential. Scorers should be shielded from personal contact and ex parte contacts from bidders, and bidders provide much sensitive information that the Department has long protected, as for instance, relating to their finances and the options they have on properties. Disclosure of these types of information would render the RFP and decision-making processes ineffective and unable to achieve results in the best interests of the District.

Subpoena Request 2:

The final and complete signed Decision Memorandum for the Fall 2017 Consolidated RFP.

Subpoena Request 2 Response:

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<sup>1</sup> The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id.*

DHCD objects to the production of this record as it is deliberative. As explained above, DFD staff recommendations or decision memoranda are created by DFD staff as an encapsulation of their review of the projects pursuant to the criteria given in RFP. Decision memoranda are one of many factors that go into informing the Director's final selection of projects. The Decision Memorandum for the Fall 2017 Consolidated RFP gives the staff's evaluation of each project that responded to the RFP and their recommendations for selection. This memorandum helped the Director make final selections, but was not, itself, the final decision. As such, it was predecisional and deliberative and thus falls under the deliberative process privilege.

Subpoena Request 3:

Any and all records related to the final selection criteria used by the DHCD Director to select from among those responsive to the Fall 2017 Consolidated Request for Proposals to the RFP.

- Specifically, with respect to the following projects, provide any comments, justification and/or recommendations from DHCD staff or other District of Columbia officials relating to the final selections, including why you awarded funding for the following projects that were not recommended by the DFD:
  - o Mary's House
  - o 3500 East Capitol Street N.E.
  - o 1100 Eastern Ave N.E.
  - o Anacostia Gardens Apartments
  - o Petworth Station
- In addition, please provide any and all records, including any comments, justification and/or recommendations from DHCD staff or other District of Columbia officials relating to the final selections, to support your decision to not award HPTF funds to the following projects that were recommended by the DFD:

[REDACTED]

Subpoena Request 3 Response:

As stated above, selection criteria are given in the RFP itself. Additionally, the Department maintains its objection to the production of DFD staff recommendations and decision memoranda as they are deliberative.

Additional Objection to Timeframe for Compliance:

The Department has worked to comply fully with this subpoena duces tecum. However, DHCD objects to the subpoena as it was given just one business day to comply.<sup>2</sup> One business day is not a reasonable time to comply. The Director previously explained the process and reasoning why preliminary recommendations from panels may not match her ultimate selections, in the hope that your previous document request could be satisfied through other means that do not jeopardize our decision-making process.

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<sup>2</sup> DC Superior Court Civil Rule 45 (c)(3)(A)(i) states that on a timely motion, the court must quash or modify a subpoena that fails to allow reasonable time to comply.

This concludes DHCD's response to your Subpoena Duces Tecum. Please do not hesitate to contact me directly at 202-442-7215 or Allison Ladd, Deputy Director, at 202-316-7583 should you have questions or require additional information or if you or your staff would like to discuss other possible ways to make information available, but guarantee that pre-decisional information is not released to the public and the privilege not waived.

Sincerely,



Polly Donaldson  
Director

cc: Allison Ladd, Deputy Director, DHCD  
Julia Wiley, General Counsel, DHCD  
Betsy Cavendish, Mayor's General Counsel  
Brian Kenner, Deputy Mayor, Planning and Economic Development

May 3, 2019

**SENT VIA EMAIL**

Ms. Polly Donaldson  
Director  
Department of Housing and Community Affairs  
1800 Martin Luther King Jr. Avenue, S.E.  
Washington, DC 20020

Dear Director Donaldson:

I write in response to your letter of April 29, 2019, which conveyed your objections to the Subpoena Duces Tecum served on the Department of Housing and Community Development (DHCD) on April 25, 2019.

As an initial matter, your objections are meritless. Whether or not DHCD could invoke the deliberative-process privilege to object to a request for information in other contexts, the privilege is not a valid basis to object to the access Congress provided my office in the Home Rule Act, D.C. Code § 1-204.55. As you may know, I have previously explained as much to the Executive Office of the Mayor (EOM). I would have full authority to request that the Superior Court of the District of Columbia enforce the outstanding Subpoena.

Despite your noncompliance with the Subpoena and prior information requests, however, I have now obtained all the information on the DHCD Housing Production Trust Fund that I need for present purposes. While I am not withdrawing the Subpoena, I do not perceive a current need to involve the courts. Of course, should you wish nonetheless to comply with the Subpoena by producing all the documents at issue, I would welcome that.

Relatedly, I would welcome any concrete proposal relating to the public release of any information provided to my office. Indeed, I have proposed discussing this topic with EOM in the past, without response. I do not believe, however, that the prospect of such discussions should affect whether, and how promptly, any part of the District of Columbia Government should provide the access required by law. I would also note in that regard that D.C. Code § 1-301.44c(d) establishes that disclosure of information at my office's request "shall not constitute a waiver of any privilege or exemption that otherwise could lawfully be asserted by the District

of Columbia to prevent disclosure to the general public or in a judicial or administrative proceeding.”

Sincerely yours,

A handwritten signature in blue ink that reads "Kathleen Patterson". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kathleen Patterson  
District of Columbia Auditor

cc: Allison Ladd, Deputy Director, DHCD  
Julia Wiley, General Counsel, DHCD  
Betsy Cavendish, General Counsel, EOM  
Brian Kenner, Deputy Mayor, Planning and Economic Development

## About ODCA

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The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

**Office of the District of Columbia Auditor**  
**717 14th Street N.W.**  
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**Washington, DC 20005**

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