



DOES Lacks Policies and Procedures to Effectively Monitor D.C.'s First Source Program

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A Report by the Office of the District of Columbia Auditor
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Why ODCA Did This Audit

For more than 30 years, the First Source Program (Program) was designed to be an important part of the District of Columbia's strategy to provide local job opportunities and reduce unemployment among District residents. Despite the program's longevity, numerous reports have indicated that specific areas of the program were poorly run. The Auditor chose to conduct a discretionary audit and evaluation of the Program and this audit report reviews the Department of Employment Services' (DOES) performance in managing the Program. During our audit we also conducted an analysis to assess whether the requirements of the Law have been implemented, and whether policies and procedures are in place to effectively implement all the requirements of the Law. We also compared the Program and its best practices to other jurisdictions. The results of this additional analysis will be presented in a second report that will include the employment projections and hiring statistics for the 27 projects or contracts included in our audit sample.

What ODCA Found

- DOES was not monitoring all beneficiaries required to enter into a First Source Agreement.
- DOES lacked written policies and procedures leading to inconsistencies in monitoring efforts.
- DOES lacked effective internal policies and procedures to effectively enforce penalties allowable under the Law.
- Semiannual reports may not be providing an accurate accounting of jobs created resulting from agreements contracts between the District and beneficiaries of District funding.

For more information regarding this report, please contact Diane Shinn, ODCA Director of Communications, at diane.shinn@dc.gov or 202-727-3600.

What ODCA Recommends

- The Mayor, in collaboration with the DOES, should convene a committee between contracting agencies to establish written policies and procedures to ensure that an employment agreement is entered into before finalization of contract award.
- The DOES Director should expedite the review and dissemination of SOPs for the Office of First Source Compliance to ensure consistency in monitoring efforts.
- DOES should develop standardized forms that capture all necessary reporting requirements and establish a process of rejecting report submissions that do not contain all necessary information.
- DOES should establish written procedures for fine assessments and maintain records of all committee-meeting actions.
- DOES should document when fines are waived and make this information accessible on its website.
- The D.C. Council should consider revising requirements in the semiannual reports to require that the reports also include percentage hour achievements to accurately capture achievement of percentage hour hiring rates as outlined in D.C. Code § 2-219.03(e)(1A)(a).
- DOES should establish written policies and procedures, including retention of supporting documents, related to calculating the reporting requirements in the Law and presented to the D.C. Council to ensure that hiring statics can be fully supported.

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Background

For more than 30 years, the First Source Program (Program) has been cited as an important part of the District of Columbia's strategy to provide local job opportunities and reduce unemployment among District residents. According to the Department of Employment Services (DOES) website, the program "ensures that city residents are given priority for new jobs created by municipal financing and development programs." During the scope of our audit, FY 2014 to FY 2016, the law required that the Mayor¹ include for every government-assisted project or contract a requirement that the beneficiary enter into a First Source Employment Agreement (hereafter referred to as employment agreement) with the District of Columbia which states that:

- The first source for finding employees to fill all jobs created by the government-assisted project or contract will be the First Source Register.
- The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register.²

The most recent significant changes to the program and the First Source Law (Law) were initiated through the "Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011" (the Act).³ The changes followed a critical audit by the Office of the D.C. Auditor issued in May 2010, which found that DOES had not provided adequate monitoring.

ODCA at that time reported that DOES stated "because of staffing limitations they could not adequately track monthly reports and fulfill monitoring duties...Consequently DOES could not determine if FSA goals were reached. As a result, developers may not have employed as many District residents as they could have." Based on a sample of 16 projects reviewed, ODCA concluded that only four met or exceeded the 51% hiring goal. "As a consequence," ODCA reported, "the District and its residents lost potential job revenue of more than \$14 million."

The legislative changes enacted in 2011 included, but were not limited to:

- Increasing the base subsidy level that triggers an employment agreement from \$100,000 to \$300,000.
- Requiring that each government-assisted⁴ construction project receiving government assistance totaling \$5 million or more is to adhere to enhanced First Source hiring requirements.

For more than 30 years, the First Source Program has been cited as an important part of D.C.'s strategy to provide local job opportunities and reduce unemployment among District residents.

¹ The Mayor issued Mayor's Order 2018-010 effective January 10, 2018. This order delegated specific authority of the Mayor under the First Source Act to the Director of the Department of Employment Services and the Chief Procurement Officer. A copy of Mayor's Order 2018-010 can be found at Appendix A.

² See DC Code § 2-219.03(a).

³ The "Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011" (B19-0050, Law 19-0084) became effective on February 24, 2012.

⁴ DC Code § 2-219.01(5) defines "Government assisted project or contract" as any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more.

- Requiring specific documentation evidencing a good-faith effort to comply with First Source requirements prior to obtaining a waiver from an employment agreement.
- Including pro-rated fines for not reaching specific hiring requirements.

Law Requirements for Projects or Contracts Receiving Government Assistance Totaling Between \$300,000 and \$5,000,000

The Law also requires that each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000, include a provision that at least 51 percent of the new employees hired on the project or contract shall be District residents.⁵ As written, this requirement applies only to new positions created that are not immediately filled by individuals already on the payroll of the contractor (e.g. a transfer of a current employee working on another project of the beneficiary).

The Law requires that each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000 submit to DOES each month following the start of the project or contract a hiring compliance report for the project or contract that includes the:

- Number of employees who worked on the project or contract.
- Number of current employees transferred.
- Number of new job openings created.
- Number of job openings created by employee attrition.
- Number of job openings listed with DOES.
- Total monthly and direct and indirect labor costs associated with the project or contract.
- Total number of District residents hired for the reporting period and the cumulative total number of District residents hired.
- Total number of all employees hired for the reporting period and cumulative total number of employees hired, including each employee's name, Social Security Number, job title, hire date, residence.
- Referral source for all new hires.⁶

Law Requirements for Construction Projects or Contracts Receiving Government Assistance Totaling \$5 Million or More⁷

As previously stated, the Act made changes to the Law requiring that each government-assisted construction project or contract receiving government assistance totaling \$5 million or more adhere to enhanced First Source hiring requirements. Specifically, the Law requires that each government-assisted⁸ construction project or contract receiving government assistance totaling \$5 million or more, include a provision requiring that:

- At least 20 percent of journey worker hours by trade shall be performed by District residents.

⁵ See DC Code § 2-219.03 (e)(1)(A).

⁶ See DC Code § 2-219.03 (e).

⁷ For purposes of this report a reference to "construction project" is referring to a construction project over \$5 million with enhanced First Source requirements.

⁸ "Government assisted project or contract" means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more. See D.C. Code § 2-219.01(5).

- At least 60 percent of apprentice hours by trade shall be performed by District residents.
- At least 51 percent of skilled laborer hours by trade shall be performed by District residents.
- At least 70 percent of common laborer hours by trade shall be performed by District residents.⁹

The Law requires that each month following the start of the construction project or contract, beneficiaries submit to DOES copies of their monthly cumulative certified payrolls, monthly and cumulative certified payrolls from all subcontractors at any tier working on the project or contract, as well as a report of the total monthly direct and indirect labor costs associated with the project or contract.¹⁰ Last, the Act made changes to the Law requiring bidders and awardees on construction projects or contracts totaling \$5 million or more to submit employment plans that identify specific details regarding associated jobs and strategies to meet their hiring requirements.¹¹

Law Requirements for Companies Bidding on Construction Projects

According to the Law, companies bidding on construction projects are to submit an employment plan that include:

- Strategies to meet the local hiring requirements as part of its response to a solicitation.
- Descriptions of health and retirement benefits provided to employees who worked on any of the bidder or offeror's past 3 completed projects or contracts.
- A description of the bidders' efforts to provide District residents with ongoing employment and training opportunities after they complete work on the project or contract for the job they were initially hired.
- Disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, where applicable, on projects or contracts completed within the last 2 years.

These plans are to be evaluated and scored, based on the above requirements, and shall be worth 10 percent of the overall score of the bid or proposal.

First Source Law Requirements for Companies Awarded a Construction Contract or Project

The winning bidder on a contract or project has an additional requirement to submit a revised employment plan, which includes, but is not limited to:

- A projection of the total number of hours to be worked on the project or contract by trade.
- A projection of labor hours per labor category in the construction industry.
- A description of skill requirements by job title or position.
- Strategies to fill the hours by DC residents prior to beginning work on the project.¹²

Requirements for Submission of Final Request for Payment

With the submission of the final request for payment from the District, beneficiaries are required to submit a report that documents its compliance with hiring requirements or submit a request for a waiver of compliance. This request for a waiver shall include the following documentation:

⁹ See D.C. Code § 2-219.03(e)(1A)(a).

¹⁰ See D.C. Code § 2-219.03(e)(1A)(D).

¹¹ See D.C. Code § 2-219.03(e)(1A)(F).

¹² *Id.*

- Material supporting a good-faith effort to comply.
- Referrals provided by DOES and other referral sources.
- Advertisement of job openings listed with DOES and other referral sources.¹³

The hiring requirements may be waived if:

- DOES has certified that a good-faith effort to comply has been demonstrated.
- The beneficiary is located outside the Washington Standard Metropolitan Statistical Area.
- None of the contract work is performed inside the Washington Standard Metropolitan Statistical Area.
- The beneficiary published each job opening or part-time work need for seven calendar days in a District newspaper of city-wide circulation.
- DOES certifies that there are insufficient eligible applicants from the First Source Register that possess the skills required by the positions, or the eligible applicants are not available for part-time work or do not have a means to travel to the onsite job.
- The beneficiary enters into a special workforce development training or placement arrangement with DOES.¹⁴

DOES is required to consider the following when determining a good-faith effort to comply:

- Whether DOES has certified that there is an insufficient number of District residents in the labor market who possess the skills required to fill the positions that were created as a result of the project or contract.
- Whether the beneficiary posted the jobs on the DOES website for a minimum of 10 calendar days.
- Whether the beneficiary posted each job opening or part-time work needed in a District newspaper with city-wide circulation for a minimum of seven calendar days.
- Whether the beneficiary has substantially complied with the relevant monthly reporting requirements.
- Whether the beneficiary has submitted and substantially complied with its most recent employment plan that has been approved by DOES.¹⁵

Penalties Established by Law

The Law establishes penalties for failure to meet specific hiring requirements. If a contractor or subcontractor is not able to achieve the 51 percent new hire or any of the other percentage requirements for the different labor categories, the contractor is subject to a penalty of 1/8 of 1 percent of the direct and indirect labor costs of the project for each percentage by which the contractor fails to meet the hiring requirements.

The Law also establishes a penalty of 5 percent of the total amount of the direct and indirect labor costs of the project or contract for a willful breach of the employment agreement, failure to submit required monthly reports, or deliberate submission of falsified data. Last, the Law states that upon the second violation within a 10-year time frame of the required hiring or reporting requirements or failure to

¹³ See D.C. Code § 2-219.03(e)(2)

¹⁴ See D.C. Code § 2-219.03(e)(3)(A).

¹⁵ See D.C. Code § 2-219.03(e)(3)(B).

receive a good-faith waiver from DOES, a person or entity shall be debarred from consideration for award of contracts or subcontracts with the District of Columbia for a period of not more than 5 years.¹⁶

Office of First Source Compliance Duties

The Law established the Office of First Source Compliance (OFSC) as a single administrative unit in DOES.¹⁷ According to the Law, the main functions of OFSC are to:

- Enforce, monitor, and ensure compliance with employment agreements for each beneficiary required to enter into an employment agreement.
- Receive and accept employment agreements and employment plans.
- Receive and monitor required monthly compliance reports and certified payrolls.
- Submit to the Council and the Mayor a quarterly report.¹⁸

Prior to October 2016, OFSC was located in the DOES' Office of Employer Services. OFSC moved to the Office of Labor Law Enforcement (OLLE) in FY 2017. With the move, came new leadership. The new leadership developed a First Source Operations Plan and a new six-month strategic operation achievement plan. Currently there are three monitors and a supervisor in OFSC. According to DOES the monitors and supervisor currently monitor 864 employment agreements related to 280 contracts or projects in both the construction and non-construction sectors.

Reports

The Law requires the submission of a semiannual report to the Council of the District of Columbia on January 31 and July 31 of each year. The report shall include for each preceding 6-month period:

- 1) The number of government –assisted projects or contracts for which employment agreements were executed.
- 2) The number of jobs that result from employment agreements.
- 3) The number of D.C. residents actually employed in government-assisted projects or contracts.
- 4) The number of names of unemployed District residents on the First Source Register.¹⁹

Overall, the Law includes 48 significant requirements that impact the Mayor, contracting agencies, and DOES.²⁰ This report reviews DOES's performance in managing the First Source program. During our audit we also conducted an analysis to assess whether all the requirements of the Law have been implemented, and whether policies and procedures are in place to effectively implement all the requirements of the Law. We also compared the District's First Source Program to other jurisdictions and best practices. The results of this additional analysis will be presented in a second report that will include the employment projections and hiring statistics for the 27 projects or contracts included in our audit sample, an assessment of the draft policies and procedures and work flow plan submitted by DOES in November 2017, and compliance status of recommendations related to the First Source Program cited in our August 1, 2016, report entitled "District Agencies Did Not Provide Sufficient Oversight of

¹⁶ See D.C. Code § 2-219.03(e)(4).

¹⁷ See D.C. Code § 2-219.33.

¹⁸ See D.C. Code § 2-219.34.

¹⁹ See D.C. Code § 2-219.04.

²⁰ The Mayor issued Mayor's Order 2018-010 effective January 10, 2018. This order delegated specific authority of the Mayor under the First Source Act to the Director of the Department of Employment Services and the Chief Procurement Officer. A copy of Mayor's Order 2018-010 can be found at Appendix A.

Private Development Projects and Have Not Collected Potentially Significant Fines”.²¹

²¹See www.dcauditor.org/sites/default/files/Private%20Development%20Review%20Letter%20Report%208%201%2016%20-%20FINAL.pdf

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to determine:

- Whether DOES had necessary policies and procedures in place to effectively monitor and enforce compliance of First Source Law requirements, and whether it is currently enforcing compliance of First Source Law requirements.
- If necessary controls are in place to accurately report hiring rates required under the Law.

Scope

Our scope was FY 2014 through FY 2016 (October 1, 2013, through September 30, 2016). The sample size of the audit was a mix of varying contracts or projects receiving government assistance from the District. Our stratified random sample included construction, retail, non-construction, and mixed-development contracts or projects. We chose a random sample to include a mix of construction and non-construction projects, and varied forms of government assistance. We included 27 contracts/projects in our sample that encompassed a review of 235 available employment agreements with general contractors, subcontractors, and other businesses found in DOES' records. The contracts/projects in our sample received government assistance either through contracts, tax abatements, or Tax Increment Financing (TIF). Figure 1 provides a list of the contracts or projects in our sample.

Figure 1: Sample Contracts or Projects

DOES Contract/Project Name	Project/Contract Type	Beneficiary
Monroe Street Market/Catholic University South Campus Redevelopment	Mixed Use/Redevelopment	Brookland South Campus, LLC
Ballou High School	School Modernization Construction Project	Chiaromonte/Hess JV
Parking Operations	Non-Construction	U Street Parking Services (UPS)
Removal of Surplus	Non- Construction	Creative Recycling Services, LLC
TANF Placement Services	Non- Construction	KRA Corporation
TANF Work Readiness	Non- Construction	DB Grants Associates
6925 Georgia Avenue Apartments	Construction	CM Construction
Design Build Roosevelt High	School Modernization Construction Project	Smoot/Gilbane JV
AE Services-IDIQ Services	Architect and Engineering Services	Brailsford & Dunlavey
Hope Village	Non-Construction	Hope Village, Inc.
2321 4 th Street	Construction	Harkins Builder Inc.
Wharf Parcel 11 A St. Augustine Episcopal Church	Construction	Hoffman-Struever Waterfront LLC
Pruning Services	Non-Construction	Adirondack Tree Experts
Pruning Services	Non-Construction	C&D Tree Service Inc.

Pruning Services	Non-Construction	Kennedy Development LLC
Villages at Dakota Crossing	Construction	NVR Inc. t/a Ryan Homes
Adams Morgan Line Hotel	Construction/Hospitality	Walsh Construction
Safeway Georgia Ave.	Non-Construction/Retail	Safeway, Inc.
Duke Ellington School	School Modernization Construction	GS Sigal
Security Services for DC Public Schools	Non-Construction	Allied Barton Security Services LLC
Southwest Waterfront Development	Mixed Use/Redevelopment	Hoffman-Struever Waterfront LLC
Giant Alabama Ave.	Retail	Giant of Maryland
Giant 7 th Street	Retail	Giant of Maryland
Giant Park Road	Retail	Giant of Maryland
Giant H Street	Retail	Giant of Maryland
Premium Billing Services	Retail	NFP Health Services Administrators, LLC
Mission Oriented Business Integration	Non-Construction	All You Need Personnel, Inc.

Source: DOES

Eight of the 27 projects in our sample started in the scope period but are still ongoing.

Methodology

To determine whether DOES has necessary policies and procedures in place to effectively monitor and enforce compliance of First Source Law requirements, and whether it is currently enforcing compliance of First Source Law requirements, we interviewed OFSC supervisors and monitors as well as reviewed monitoring files. We specifically:

- Requested written Standard Operating Procedures (SOPs).
- Flowcharted monitoring procedures from both supervisor and monitors' verbal accounts.
- Reviewed available employment plans and employment agreements for our sample of 27 construction and non-construction contracts or projects.
- We also reviewed each contractor's or subcontractor's period of performance, projected number of hires, contract amount and the signed date of available employment agreements.

To determine if necessary controls were in place to accurately report hiring rates required under the Law, we specifically:

- Reviewed required semi-annual reports submitted to Council.
- Reviewed DOES's process for calculating the hiring rates submitted in their semi-annual reports.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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.

Audit Results

DOES did not monitor all beneficiaries required to enter into a First Source employment agreement.

As detailed in the background section, the Law requires that the Mayor include for every government-assisted project or contract a requirement that the beneficiary²² enter into an employment agreement with the District of Columbia.²³ The Law also requires that each employment agreement shall be transmitted to DOES no less than 7 calendar days in advance of the project or contract start date, whichever is later, and no work associated with the relevant government assistance can begin on a project or contract until the employment agreement has been accepted by the Department of Employment Services.²⁴

Of the 124 contracts awarded by DGS over \$300,000 we could not find documentation at DOES for 30 of these contract awards, which totaled \$22,493,159.

We conducted testing of contracts awarded by the Department of General Services (DGS) during fiscal year 2015 to determine if all contracts over \$300,000 were transmitted to DOES or if DOES maintained these in their monitoring database. Of the 124 contracts awarded by DGS over \$300,000 we could not find documentation at DOES for 30 of these contract awards, which totaled \$22,493,159.

According to DOES, the responsibility of informing DOES of beneficiaries required to enter into an employment agreement rests mainly with the contracting agency, the developer or the general contractor. We found, however, that the Law does not stipulate who is responsible for the transmission of contract, project or subcontract award status to DOES. In past years, DOES staff indicated that the Office of Contracting and Procurement (OCP), the Department of General Services (DGS), and the Deputy Mayor for Economic Development (DMPED) have not always been reliable in sending contract or project award status to DOES. Without an established notification and transmission process OFSC cannot effectively monitor all beneficiaries required to enter into an employment

agreement with the District. This makes the program ineffective, and allows some beneficiaries to receive government assistance without having to comply with the Law requirements.

²² Beneficiary” is defined in the Law as:

(A) The signatory to a contract executed by the Mayor which involves any District of Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted project or contract for which the beneficiary is required to use the First Source Register;

(B) A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of \$300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for \$1 million or more of District of Columbia funds.

(C) A retail or commercial tenant that is a direct recipient of a District government economic development action, including contracts, grants, loans, tax abatements, land transfers for public redevelopment, or tax increment financing in excess of \$300,000.

See DC Code § 2-219.01(1).

²³ See D.C. Code § 2-219.03.

²⁴ See D.C. Code § 2-219.03.(c)

Recommendations:

1. The Mayor, in collaboration with the Director of DOES, should convene a committee of contracting agencies to establish written policies and procedures to:
 - Ensure that an employment agreement is entered into before finalization of contract award.
 - Establish an automatic notification when a new contract is awarded or beneficiary enters into an agreement with the District.
 - Establish a system to track agreements by beneficiary as well as project.
 - Include additional requirements in employment agreements that general contractors or developers include in their monthly report a list of all new subcontractors, including subcontractors that have subcontracted out work, the amounts of these subcontracts and certification that an employment agreement has been submitted to DOES for approval, where required.
 - Establish a system to ensure that contracting agencies submit contract or project award status for all beneficiaries of contracts or projects required to enter into a First Source Agreement to DOES within seven days of award to ensure that DOES is fully aware of every contract or project subject to an employment agreement.
2. The DOES Director should work with the Chief Procurement Officer to enable a designated official from DOES to serve as a “watcher” on all requisitions for contracts over \$300,000 that would require an employment agreement, in the District’s Procurement Automated Support System (PASS). The DOES Director should ensure that this designated official tracks whether an employment agreement has been received for the contract and notify the contracting officer if the employment agreement has not been received.

DOES Office of First Source compliance lacked written policies and procedures which led to inconsistencies in monitoring and makes it difficult to evaluate the effectiveness of the program in providing employment to District residents.

The U.S. Government Accountability Office (GAO) Standards for Internal Control in the Federal Government (Green Book) indicate that agency managers must develop and maintain documentation of an agency’s internal control systems. Management also should demonstrate a commitment to integrity and ethical values by “using policies, operating principles, or guidelines to communicate the standards of conduct to the organization.” In addition, the Green Book identifies a requirement to document responsibilities through policies which “management communicates to personnel...so that personnel can implement the control activities for their assigned responsibilities.”

We found that the OFSC had no written SOPs. OFSC communicated to ODCA during our January 2017 entrance conference that the SOPs were still in draft and under DOES legal review and would be finalized soon. ODCA did not receive a copy of these draft SOPs and a flow chart detailing their processes until November 1, 2017, after the conclusion of the auditor’s fieldwork phase. As of February 28, 2018, these draft SOPs were still pending legal sufficiency review and the signature of the DOES Director. DOES did not submit a copy of finalized and signed SOPs until March 15, 2018. The OFSC further confirmed that the office has never had any formal or informal written monitoring policies and procedures since the inception of the program in 1984.

According to OFSC, compliance monitoring consisted of internal reviews, desk reviews, and site visits. We found, however, that there was a lack of consistency in monitoring efforts by OFSC. For example, we found monitors using different monthly report forms and self-created spreadsheets to track assigned projects. Although DOES maintained a site visit form, there were no SOPs detailing the number of site visits to conduct. In our review of OFSC records we found that site visits varied between two visits to 14 visits for a contract or project. Some construction projects had no evidence that a site visit had been conducted.

Regarding contracts between \$300,000 and \$5 million, each beneficiary is required to submit to DOES each month following the start of the project or contract a compliance report, as detailed in the background.²⁵

We found that all the requirements were not captured in monthly reports and were not monitored. The requirements that were captured most inconsistently were the number of job openings created by employee attrition, Social Security Number, hire date, and referral source of each new employee hired on the project.

We found that none of the awarded construction projects of \$5 million or more in our sample submitted a revised employment plan.

The Law also requires that a bidder on a construction project submit an employment plan that includes descriptions of health and retirement benefits provided to employees, and a description of the bidder's efforts to provide D.C. residents with ongoing employment and training opportunities after they complete work on the job for which they were initially hired, and disclosure of past compliance with the Davis- Bacon Act of 1931.²⁶ According to the Law, these plans are to be evaluated and scored, based on these requirements, and shall be worth 10 percent of the overall score of the bid or proposal. We reviewed records for contracts in our sample that were awarded by DGS for school modernization projects to determine if bidders on these projects submitted the employment plans as part of

their bid. We found that they did, but DGS did not forward this information to OFSC.

The Law also requires that the winning bidder on a contract or project has an additional requirement to submit a revised employment plan²⁷, as detailed in the background, but we found no documentation of a revised employment plan for any construction projects in our sample.

We again reviewed records at DGS for the school modernization projects in our sample and found that none of the projects in our sample submitted a revised employment plan to DGS. The revised employment plan is to include the following key elements:

- A projection of the total number of hours to be worked on the project or contract by trade.
- A projection of labor hours per labor category in the construction industry.
- A description of skill requirements by job title or position.

²⁵ See DC Code § 2-219.03 (e)(1)(c).

²⁶ See DC Code § 2-219.03 (e)(1A)(F).

²⁷ *Id.*

- Strategies to fill the hours by DC residents prior to beginning work on the project.

Without a revised employment plan, DOES has no way to measure actual performance of a contractor against goals that should be established at the beginning of a project.

We further found that the total monthly direct and indirect labor costs were not captured. This is troubling because direct and indirect labor costs serve as the basis for penalties assessed in the Law.

The lack of clear written policies and procedures for specific tasks and insufficient mechanisms to update staff on new changes or developments increases the risk that ineffective or inconsistent monitoring may occur. For the monitors to properly conduct their job, there needs to be SOPs detailing the appropriate procedures to adequately monitor the program.

The lack of policies and procedures is also a disservice to employees as they are unaware of what is expected of them and what standards they will be evaluated against. The lack of finalized SOPs also hindered leadership's ability to ensure and communicate to external parties that beneficiaries are effectively monitored and goals of the program are being achieved.

Recommendations:

3. The DOES Director should expedite the implementation of SOPs for the Office of First Source Compliance and provide documentation that relevant staff have been trained on the SOPs to ensure consistency in monitoring efforts.
4. The DOES Director should develop standardized forms that capture all necessary reporting requirements.
5. The DOES Director should establish a process of rejecting report submissions that do not contain all necessary information.

DOES has not demonstrated effective policies and procedures to enforce penalties.

The Law establishes multiple penalties for failure to meet specific hiring and reporting requirements, including debarment, as detailed in the background.²⁸

With the submission of the final request for payment from the District, beneficiaries are required to submit a report that documents its compliance with hiring requirements or submit a request for a waiver of compliance.²⁹

Despite all the penalties detailed in the Law, there has only been one fine assessed by DOES. We further found, in our review of completed projects in our sample, there were no waivers requested and there was no documentation of any waivers granted by the Mayor for projects or contracts that did not meet the first source Law requirements. We again reviewed records at DGS for the school modernization projects in our sample and found no reports from these contractors, with their submission of final request for payment, documenting their compliance with hiring requirements.

²⁸ See DC Code § 2-219.03 (e)(4).

²⁹ See D.C. Code § 2-219.03(e)(2).

Since its move to OLLE, OFSC staff report that OFSC is now more focused on compliance rather than assisting contractors in meeting the requirements under the Law, as it did under Department of Employer Services. According to DOES staff, DOES leadership in the past was not enforcing the requirements of the Law or assessing penalties. Leadership had the attitude that if companies were providing an overall positive benefit for hiring District residents, that was more important than strictly adhering to the First Source Law. OFSC further indicated that they were encouraged to work with developers and contractors to do a better job in hiring D.C residents on future projects.

According to OFSC, there is now a committee that reviews good faith efforts outlined in the Law. The supervisor could not, however, provide written procedures for good faith reviews, committee actions or documentation of committee meetings, criteria used, or the results of these committee meetings. These actions should be detailed in the SOPs. The supervisor indicated these will be in the SOPs when approved. We found however, that as of February 28, 2018, these SOPs were still in draft form and had not yet been submitted to DOES's General Counsel for legal review. DOES did not submit a copy of finalized and signed SOPs until March 15, 2018.

Failure to enforce penalties does not ensure compliance with the Law and undermines the seriousness of the Law.

Recommendations:

6. The Director of DOES should expedite the implementation of SOPs for fine assessments and provide documentation that relevant staff have been trained on the SOPs.
7. The Director of DOES should document and maintain records of all committee-meeting actions.
8. The Director of DOES should document when allowable fines are waived and make this information accessible on their website.

First Source semiannual reports did not contain all information required by D.C. law, cannot be fully validated, and do not provide a comprehensive picture of hiring statistics.

The Law requires the submission of a semiannual report to the Council of the District of Columbia on January 31 and July 31 of each year. The report shall include for each preceding six-month period:

- 1) The number of government-assisted projects or contracts for which employment agreements were executed.
- 2) The number of jobs that result from employment agreements.
- 3) The number of District residents employed in government-assisted projects or contracts.
- 4) The number of names of unemployed District residents on the First Source Register.³⁰

Despite all the penalties detailed in the Law, there has only been one fine assessed by DOES.

Figure 2 on the following page shows that the semiannual reports did not always contain the required information.

³⁰ See D.C. Code § 2-219.04.

Figure 2: Semiannual Reports Missing Key Information From 2014-2016

Requirements	1/1/2014 to 6/30/2014	7/1/2014 to 12/31/2014	1/1/2015 to 6/30/2015	7/1/2015 to 12/31/2015	1/1/2016 to 6/30/2016	7/1/2016 to 12/31/2016
Total number of First Source Agreements	178	290	Not Reported	267	217	449
Total Number of Individuals Hired from Contracts Subject to First Source Agreements	1072	2064	Not Reported	1120	830	938
Number of District Resident Hired from Contracts Subject to First Source Agreements	491	837	553	579	511	567
Total number of Unemployed District residents on the First Source Register	None Reported	16,265	None Reported	6780	6979	6847

Source: DOES Semi-Annual Report Submissions

We also tested the reliability of the reported number of employment agreements, individuals hired from contracts subject to employment agreements, number of District residents hired from contracts subject to employment agreements, and the total number of unemployed District residents on the First Source Register. We requested supporting documentation for the numbers DOES presented in their semi-annual reports. We found that:

- OFSC was unable to provide a report detailing who the beneficiaries were that entered into a first source agreement to support the total number of first source agreements cited in their reports.
- OFSC was unable to provide a report listing individual names of unemployed District residents to support the total number of unemployed District residents on the First Source Register cited in their calendar year 2014 semi-annual reports.
- OFSC was unable to provide a report detailing who the beneficiaries were who entered into a first source agreement or a report listing individual names of persons hired subject to a first source agreement to support the numbers cited in their semi-annual reports for the periods January 1, 2014, to June 2015. As a result, we could not fully validate the results presented in the semiannual reports submitted to Council. January 1, 2014, to June 2015. As a result, we could not fully validate the results presented in the semiannual reports submitted to Council.

It should be noted that the semiannual report provisions only require the total number of individuals hired subject to an employment agreement and the number of District residents hired from contracts subject to employment agreements. This omits key hiring elements required in the Law. We found that the Council is not receiving status on a semiannual basis of construction projects over \$5 million and whether contractors are meeting the percentage hour requirements outlined in the Law.

Without the status of construction projects over \$5 million, the Council is not receiving an accurate reflection of DC residents working on construction projects over \$5 million.

Recommendations:

9. Council should consider revising requirements in the semiannual reports to require that the reports also include percentage hour achievements to accurately capture achievement of percentage hour hiring rates as outlined in D.C. Code § 2-219.03(e)(1A)(a).
10. DOES should establish written policies and procedures, including retention of supporting documents, related to calculating the reporting requirements in the Law and presented to Council to ensure that hiring statics can be fully supported. These supporting documents at a minimum should include, for each reporting period:
 - A report detailing who the beneficiaries were that entered into a First Source agreement.
 - A report listing individual names of unemployed District residents on the First Source Register.
 - A report listing individual names of persons hired subject to a first source agreement.

Summary of Report Recommendations

Most of the recommendations in this report are budget neutral or have the potential to generate revenue to advance the goals of DOES and the Mayor. Implementation of these recommendations have the potential to:

- A. Help DOES achieve one their FY 2018 strategic objectives, specifically to improve employment or placement of District Residents in government assisted projects, while enhancing the enforcement of said efforts via monitoring of existing First Source Agreements.³¹
- B. Further assist the Mayor in supporting goals and strategies presented in the District's Innovation and Opportunity Act (OIOA) State Plan (Unified State Plan 2016-2020).³²
- C. Provide funding in support of the Jobs Trust Fund established and available for use in operating workforce intermediary programs.³³

Recommendation	Budget Neutral	Potential for Revenue Generation or Savings	Specific Agency or District-Wide Goal Advanced by Recommendation (See listing above)
1. The Mayor, in collaboration with the Director of DOES, should convene a committee between contracting agencies to establish written policies and procedures to: • Ensure that an employment agreement is entered into before finalization of contract award. • Establish an automatic notification when a new contract is awarded or beneficiary enters into an agreement with the District. • Establish a system to track agreements by beneficiary as well as project. • Include additional requirements in employment agreements that General Contractors or Developers include in their	X		A, B

³¹ <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOES18.pdf>

³²

https://dcworks.dc.gov/sites/default/files/dc/sites/dcworks/publication/attachments/WIOA_DC_Unified_State_Plan_Final.pdf

³³ See **D.C. Code § 2-219.04c Establishment of the District of Columbia Jobs Trust Fund.** (a) The District of Columbia Jobs Trust Fund which shall be administered by the Deputy Mayor for Planning and Economic Development. The funds in the Fund shall be used solely for the purpose of establishing and operating the workforce intermediary pilot program or any succeeding program. The following shall be deposited into the Fund: (1) Voluntary and negotiated contributions and donations, including past contributions for similar purposes that have yet to be collected. (2) All outstanding monetary fines for breach of this part. (b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall continually be available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

Recommendation	Budget Neutral	Potential for Revenue Generation or Savings	Specific Agency or District-Wide Goal Advanced by Recommendation (See listing above)
monthly report a list of all new subcontractors including subcontractors that have subcontracted out work, the amounts of these subcontracts and certification that an employment agreement has been submitted to DOES for approval, where required.			
2. The DOES Director should work with the Chief Procurement Officer to enable a designated official from DOES to serve as a “watcher” on all requisitions for contracts over \$300,000 that would require an employment agreement, in the District’s Procurement Automated Support System (PASS). The DOES Director should ensure that this designated official tracks whether an employment agreement has been received for the contract and notify the contracting officer if the employment agreement has not been received.	X		A, B
3. The DOES Director should expedite the implementation of SOPs for the Office of First Source Compliance and provide documentation that relevant staff have been trained on the SOPs to ensure consistency in monitoring efforts.	X		A, B
4. The DOES Director should develop standardized forms that capture all necessary reporting requirements.	X		A, B
5. The DOES Director should establish a process of rejecting report submissions that do not contain all necessary information.	X		A, B
6. The Director of DOES should expedite the implementation of SOPs for fine assessments and provide documentation that relevant staff have been trained on the SOPs.		X	A, B, C
7. The Director of DOES should document and maintain records of all committee-meeting actions.		X	A, B, C
8. The Director of DOES should document when allowable fines are waived and make this information accessible on their website.	X		B

Recommendation	Budget Neutral	Potential for Revenue Generation or Savings	Specific Agency or District-Wide Goal Advanced by Recommendation (See listing above)
9. Council should require that the semi-annual reports also accurately capture achievement of percentage hour hiring rates as outlined in D.C. Code § 2-219.03(e)(1A)(a).	X		B
10. DOES should establish written policies and procedures, including retention of supporting documents, related to calculating the reporting requirements in the Law and presented to Council to ensure that hiring statics can be fully supported. These supporting documents at a minimum should include, for each reporting period: • A report detailing who the beneficiaries were that entered into a First Source agreement. • A report listing individual names of unemployed District residents on the First Source Register. • A report listing individual names of persons hired subject to a first source agreement.	X		B

Conclusion

The objective of this audit was to determine whether DOES had necessary policies and procedures to effectively monitor and enforce compliance of First Source Law requirements, was enforcing compliance of First Source Law requirements, and had controls in place to accurately report hiring rates required under the Law. Overall, during the scope of our audit, we found that DOES was not monitoring all beneficiaries required to enter into a First Source Agreement, lacked written policies and procedures to effectively monitor beneficiaries of District funding, and lacked policies and procedures to effectively enforce penalties allowed under the Law. We were encouraged by DOES's response to our findings in that they concurred and expressed that certain actions were in progress to address deficiencies cited in this report.

Agency Comments

On March 2, 2018, we sent a draft copy of this report to DOES for review and written comment. DOES responded with written comments on March 13, 2018, and again on April 17, 2018. The DOES April 17, 2018, written responses also included comments to our companion white paper report. Agency comments are appended in full to this report followed by ODCA's response to specific comments on this audit report. Attachments to DOES's April 17, 2018, response are located on the ODCA website at www.dcauditor.org.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

MEMORANDUM

TO: Odie Donald II
Director
Department of Employment Services

THROUGH: Unique Morris-Hughes
Chief of Staff
Department Of Employment Services

THROUGH: Mohammad R. Sheikh
Deputy Director
Labor Standards Bureau

FROM: Michael Watts
Associate Director
Office of Wage-Hour

DATE: March 13, 2018

SUBJECT: Response to Office of First Source Compliance Audit Findings

The Office of Wage Hour (OWH), within the Department of Employment Services (DOES), is responsible for the enforcement of wage laws and requirements in the District, including minimum wage, reporting and posting requirements, and compliance. As of October 13, 2016, OWH is now responsible for oversight of the Office of First Source Compliance (OFSC).

On March 2, 2018, the Office of the District of Columbia Auditor (DCA) completed its audit of OFSC and provided a draft entitled, DOES Lacks Policies and Procedures to Effectively Monitor D.C.'s First Source Program.

This Memorandum is provided to address the findings of DCA's audit of OFSC.

I. Audit: DOES (or OFSC) was not monitoring all beneficiaries required to enter into a First Source employment agreement.

OFSC monitors every awarded First Source contract that is transferred to DOES from OCP and other Contracting Agencies. DOES and the OFSC has implemented a "train-the-trainer" initiative where the OFSC staff meets to discuss procedure and compliance

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

requirements with the personnel of the Office of Contracting and Procurement (OCP) and other DC contracting agencies.

Also, on a regular basis OFSC receives notices of contracts awarded from Procurement Automated Support System (PASS).

OFSC staff has requested notices to contracting agencies and requests updated contractor lists for contract awards of \$300,000 and over.

These train-the-trainer meetings took place on: June 15, 2017 and March 7, 2018

II. Audit: DOES OFSC lacks written policies and procedures which lead to inconsistencies in monitoring efforts making it difficult to evaluate the effectiveness of the program in providing employment to district residents.

Since the OFSC transfer to OWH oversight, the OFSC has been operating under the drafted Standard Operations Procedure (SOP) for the OFSC. The OFSC's SOP was approved by general counsel on March 12, 2018. OFSC operated under the new SOP which added the penalty process and standardized the monitoring process.

The difference in monitoring tactics from project to project depends on the size of the project and choice in which the general contractor wishes to report requirements, as a whole or by each individual subcontractor. The OFSC has streamlined the monitoring process of the monitors under the new SOP.

The reports detailing the number of job openings created by employee attrition, SSN, hire date, are available; however, the referral source data is currently available for capturing in OFSC First Source Online Registration and Reporting System (FORRS).

The direct and indirect labor costs are captured to assess the amount of the penalty for violation. Moving forward the OFSC will be capturing the direct and indirect labor cost in FORRS on a monthly basis.

III. DOES OFSC has not demonstrated effective policies and procedures to enforce penalties.

Under the new SOP, OFSC has implemented the penalty process and issued penalties to contractors alleged to have violated First Source law. DOES has formed an internal inter-

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

office committee to review the waiver requests for Beneficiaries that did not meet First Source requirements, but posit good faith efforts were made to meet requirements.

The Mayor's Order, signed on January 10, 2018, clarified the role of OFSC in issuing fines for violations of First Source law and the ability to accept or deny the waiver request of Beneficiaries of First Source funding.

DOES, OWH, and OFSC are all focused on First Source Compliance of the Beneficiaries as well as assistance with recruitment and finding unemployed District residents to fill created First Source Positions. DOES also formed an internal committee across various offices within DOES to plan and oversee this function. Currently that committee is meeting every Thursday.

IV. First Source semiannual reports did not contain all information required by D.C. law, cannot be validated, and do not provide a comprehensive picture of hiring statistics.

OFSC submitted reports containing all of the information required by law for:

July 1, 2014 to December 31, 2014; See Attachment

January 1, 2015 to June 30, 2015; See Attachment

July 1, 2015 to December 31, 2015; See Attachment

January 1, 2016 to June 30, 2016; See Attachment

July 1, 2016 to December 31, 2016. See Attachment

July 1, 2015 – December 31, 2016 each of these reports are accompanied with the lists of unemployed D.C. residents that are registered on the First Source Register (D.C. networks).

Attach Beneficiaries are in the Semi Annual Report backup data.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

DR. UNIQUE MORRIS-HUGHES
INTERIM DIRECTOR

April 17, 2018

Ms. Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, Northwest
Suite 900
Washington, DC 20005

Re: Draft Report entitled, "DOES Lacks Policies and Procedures to Effectively Monitor D.C.'s First Source Program" and white paper entitled, "Fewer than One-Fifth of First Source Provisions Have Been Effectively Implemented and the District Has Not Demonstrated Success in Hiring and Retaining District Employees"

Dear Ms. Patterson:

The Department of Employment Services (DOES) is in receipt of the above-mentioned draft report and white paper prepared after the audit of the DOES Office of First Source Compliance (OFSC) for fiscal years 2014 through 2016. Although the audit and whitepaper reviews compliance activities from fiscal years 2014- 2016, it misses the mark on adequately describing the progress made from fiscal years 2017 to present. Here within, is a substantive outline of initial progress made in the current fiscal year and responses to findings and recommendation.

The Office of First Source Compliance was created through the Workforce Intermediary Establishment and Reform of First Source Act of 2011 (Act) and is charged with enforcing compliance with the Act. The Act requires beneficiaries to hire District residents for 51% of all new jobs created for all projects or contracts receiving government assistance totaling between \$300,000 and \$5,000,000. Further, the Act mandates minimum hours worked percentages for District residents on construction projects or contracts receiving government assistance of \$5,000,000 or more.

Over the past year, DOES made great strides in the development and implementation of a strategic course correction for the Office of First Source; these efforts included the realignment of the Office of Wage Hour within the agency that focused on both compliance and enforcement and the development of a six month operations plan. This plan addressed the following:

- Ensuring that the First Source staff made informed compliance decisions and enforcement actions supported by complete, accurate and valid data
- Establishing internal operational processes and procedures for all FS related duties and responsibilities

- Improving staff effectiveness through continuing education and training requirements and innovative tools and technology
- Connecting stakeholders and aligning them with strong compliance and monitoring practices and principles

Also, an achievement plan was developed and implemented to record and monitor the plan outcomes. For the first time in over 20 years, the agency has developed Standard Operating Procedures which provide clarity of roles for the public and the District as well clear policies and procedures. This year marked the first time ever that the agency levied fines for non-compliance. The agency anticipates the release of the proposed rules within the next 30 days. Albeit, the progress made in a relatively short period of time is outside of the audit period, it is important to note that the actions listed above provide an important course correction with implementing and providing oversight of the First Source law.

Audit Result: DOES was not monitoring all beneficiaries required to enter into a First Source employment agreement.

This audit result correlates with item 2 in Appendix C of the white paper. Item 2 indicates that D.C. Code § 2-219.03(c) has not been effectively implemented. D.C. Code § 2-219.03(c) states, “The Mayor shall transmit each employment agreement to the Department of Employment Services no less than 7 calendar days in advance of the project or contract start date, whichever is later, and no work associated with the relevant government assistance can begin on a project or contract until the employment agreement has been accepted by the Department of Employment Services.”

DOES Response:

DOES OFSC monitored and continues to monitor every project or contract that is subject to the Act, when the employment agreement is provided to DOES by the Office of Contracting and Procurement (OCP) and agencies with independent contracting authority, pursuant to the Act.

DOES uses several methods to identify projects and contracts subject to the Act.

- On a daily basis, DOES receives employment agreements from OCP and agencies with independent contracting authority, during the bidding process for projects and contracts. Bidders for projects and contracts sign and submit an employment agreement to OCP and agencies with independent contracting authority, as a part of the bidding process. Through this process, employment agreements are signed and provided to DOES, prior to contract award. Thus, employment agreements are entered into before finalization of

contract award as suggested in the first bullet point under Recommendation 1 found on page 10 of the draft report.

- DOES receives notifications about projects and contracts in the Procurement Automated Support System (PASS) that are subject to the Act, as they are developed. DOES uses the information to begin monitoring high profile employment agreements received during the bidding process. DOES also uses this information to contact contracting agencies and beneficiaries to obtain employment agreements, if not previously provided.
- DOES coordinates monthly with OCP staff assigned to DOES to receive information about projects and contracts in the Procurement Automated Support System (PASS) that are subject to the Act. DOES uses the information to begin monitoring employment agreements received during the bidding process. DOES also uses this information to contact contracting agencies and beneficiaries to obtain employment agreements, if not previously provided. The OCP staff assigned to DOES serve as the “watcher” identified in Recommendation 3 on page 11 of the draft report.
- DOES OFSC requests updated lists of awarded contracts from OCP and agencies with independent contracting authority, monthly.
- DOES OFSC proposed regulations, to be published, that will require District contracting agencies to submit updated lists of awarded contracts on the 1st of each month.
- Deputy Mayor for Planning and Economics (DMPED) provides DOES OFSC a quarterly check-in compliance report of their current projects that are subject to the Act.
- DOES OFSC meets with developers and general contractors to discuss the applicable requirements of the Act, according to their funding amount, and to gain other updates such as, estimated start dates, related contract controls, and to provide information on DOES referral recruitment. OFSC also requests from the General Contractors a list of the subcontractors awarded.
- To increase awareness of the requirements of the Act around submission of the employment agreements to DOES, DOES OFSC implemented a formal “train-the-trainer” initiative that allows the opportunity for DOES OFSC to discuss procedure and compliance requirements with the personnel of OCP and agencies with independent contracting authority. Two sessions were held – June 15, 2017 and March 7, 2018.

- See **Exhibit I** for additional compliance documents

OFSC EVENTS – Exhibit A			
Date	Time	Name of Training	Audience
April 26, 2017	10:00am – 12noon	Construction Roundtable	General Contractors
June 15, 2017	10:00am – 12:00pm	First Source Employment Agreement Requirements	Non Construction Contracting Agencies
June 15, 2017	2:00pm – 4:00pm	First Source Employment Agreement Requirements	Construction Contracting Agencies
December 13, 2017	10:00am – 12noon	First Source Employment Agreement Requirements	DHCD Representatives and contractors
February 21, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
February 22, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
March 7, 2018	10:00am-12:00pm	First Source Employment Agreement Requirements	Contracting Agencies Non-Construction
March 7, 2018	1:00am-3:00pm	First Source Employment Agreement Requirements	Contracting Agencies Construction
March 22, 2018	10:00am – 12:00pm	DSLBD CBE Vendors Training	Construction and Non-Construction

The above actions will increase knowledge of and compliance with the requirements of the Act.

Audit Result: DOES OFSC lacks written policies and procedures which lead to inconsistencies in monitoring efforts making it difficult to evaluate the effectiveness of the program in providing employment to district residents.

This audit result correlates with item 1 in Appendix C of the white paper. Item 1 indicates that D.C. Code § 2-219.03(a) has not been effectively implemented. D.C. Code § 2-219.03(a) states, “The Mayor shall include for every government-assisted project or contract a requirement that the beneficiary enter into an employment agreement with the District of Columbia government which states that: (1) The first source for finding employees to fill all jobs created by the government-assisted project or contract will be the First Source Register; and (2) The first source

for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register.”

DOES Response:

DOES established formal Standard Operating Procedures (SOP) certified as legally sufficient on March 12, 2018. The SOP was developed after a rigorous review of best practices from other jurisdictions as well as an assessment of current practices. The SOP also encompasses the collective wisdom of the staff and lessons learned from prior years of monitoring projects and contracts. It also encompasses a penalty and standardized monitoring process.

Before the formal SOP signed by the DOES Director, OFSC operated pursuant to an informal written SOP, since its creation (**See Exhibit B**). Further, staff meetings were held monthly to discuss monitoring and enforcement issues and resolutions. In addition, staff met with the Office of the General Counsel to address monitoring and enforcement issues and resolutions, as needed.

Monitoring has varied and will continue to vary from project to project. Monitoring rigorousness and frequency depends on a number of factors including the size of the project, compliance with hiring or hours worked percentages, and the reporting structure chosen by the general contractor. The general contractor can choose to report requirements for the whole project or by each individual subcontractor.

See **Exhibit C** which details the reporting process that includes screenshots of the First Source Online Registration and Reporting System (FORRS), and the Employer user guide. Beneficiaries are routinely trained on how to input the required information. Note that the portal or FORRS system will not accept a submission unless all the required information is inputted.

Note that FORRS also tracks agreements by the Beneficiary as well as the project. The reports generated by FORRS detail the number of job openings created by employee attrition, and capture the employees’ SSN and hire date; however, the referral source data is currently in development stage to be captured in FORRS.

The direct and indirect labor costs are captured to assess the amount of the penalty for violation. This is generally not collected monthly because fines are assessed at the end of the project or contract. Thus, the direct and indirect costs are collected for the total project at the end of the project. Moving forward the OFSC will be capturing the direct and indirect labor cost in FORRS on a monthly basis.

DOES uses the below methods to ensure the completeness and accuracy of the information provided in the monthly reports by employers.

- Site visits
- Review of payroll records
- Social security verification
- Surveys
- Desk reviews - OFSC conducts periodic desk reviews to confirm that all documentation is complete and accurate including a signed First Source agreement, the Subcontractor award list, verification that Contractors are reporting online in the FORRS and that they are including employment plan projections, and the start and end date for the scope of work. OFSC will also conduct the desk review to verify that the Contractor is meeting the requirements for hiring and hours worked percentages. Once the review process concludes, OFSC monitors work with the Contractors to develop a corrective action plan and will perform follow-up as needed. A sample desk review form can be found in **Exhibit D**.

Note that FORRS also tracks agreements by the Beneficiary as well as the project. The reports generated by FORRS detail the number of job openings created by employee attrition, and capture the employees' SSN and hire date; however, the referral source data is currently in development stage to be captured in FORRS.

The direct and indirect labor costs are captured to assess the amount of the penalty for violation. This is generally not collected monthly because fines are assessed at the end of the project or contract. Thus, the direct and indirect costs are collected for the total project at the end of the project. Moving forward the OFSC will be capturing the direct and indirect labor cost in FORRS on a monthly basis.

DOES formed an internal committee across various offices within the agency to coordinate and manage the referral of District residents from the first source registry to fill jobs created by projects and contracts subject to the Act. The committee meets weekly to discuss best practices for identifying and designating jobs created by projects and contracts subject to the Act in DC Networks, matching District residents with the jobs created by projects and contracts subject to the Act, and tracking the referrals and outcomes of referrals of District residents to jobs created by projects and contracts subject to the Act. It is anticipated that this coordinated management will result in (1) an increase in the designation of jobs in DC Networks as created by projects and contracts subject to the Act; (2) an increase in referral of District residents from the first source

registry to jobs created by projects and contracts subject to the Act; and (3) improved tracking of referrals of District residents from the first source registry.

Also, on April 15, 2018, DOES will begin using a communications system designed to send job alerts to unemployed District residents. In addition, District residents registered with the DOES American Job Center will be advised of jobs created by projects and contracts subject to the Act directly from their assigned case managers. DOES continues to seek, and internally develop, new methods through which it can inform unemployed District residents of jobs created by projects and contracts subject to the Act.

Audit Result: DOES OFSC has not demonstrated effective policies and procedures to enforce penalties.

DOES Response: - this addresses Recommendations 6 and 7 found on page 13

The Mayor's Order, signed on January 10, 2018, clarified the role of OFSC in issuing fines for violations of First Source law and the ability to accept or deny the waiver request of Beneficiaries of government assistance falling under First Source. Absent the Mayor's Order, the law was ambiguous on whether the contracting agency or OFSC would pursue the penalty for violation, and whether OFSC or the Mayor had the authority to grant a good-faith waiver for failure to meet First Source requirements. In the past, notices were copied or forwarded to DGS and other contracting agencies regarding noncompliance of beneficiaries. (See Exhibit I)

Under the new SOP, OFSC issued penalties to contractors alleged to have violated the Act. As of December 2016, DOES imposed penalties against employers determined to be in violation of the Act. As a result, \$61,279.56 has been collected and deposited into the Job Training Fund. Going forward, DOES intends to impose penalties against violators with increasing regularity.

Furthermore, some Beneficiaries have either voluntarily contributed to the Job Training Fund or created workforce development programs to provide training to District residents.

DOES has also formed an internal inter-office committee to review beneficiaries' requests for waiver of the hiring or hours worked percentages requirement of the Act, based on good faith efforts. If a beneficiary is successful in receiving a waiver of the hiring or hours worked percentages requirement of the Act, fines are not imposed.

Audit Result: First Source semiannual reports did not contain all information required by D.C. law, cannot be validated, and do not provide a comprehensive picture of hiring statistics.

DOES Response:

The semiannual reports submitted for the audit period contained all information required by the Act. The First Source Register contains the list of unemployed D.C. residents. Records below include the list of Beneficiaries or their subcontractors and the list of District residents hired on their projects (See **Exhibit F**).

- January 1, 2015 to June 30, 2015; See Attachment
- July 1, 2015 to December 31, 2015; See Attachment
- January 1, 2016 to June 30, 2016; See Attachment
- July 1, 2016 to December 31, 2016. See Attachment

July 1, 2015 – December 31, 2016 each of these reports are accompanied with the lists of unemployed D.C. residents that are registered on the First Source Register (D.C. networks).

Attach Beneficiaries are in the Semi Annual Report backup data.

The Office of the District of Columbia Auditor (ODCA) conducted an audit focusing on the period of FY14 through FY16 to determine the effectiveness of First Source compliance procedures. The audit suggests deficiencies in the implementation and enforcement of the First Source Law. ODCA has provided its findings in the form of a white paper entitled, *Fewer Than One-Fifth of First Source Provisions Have Been Effectively Implemented and the District Has Not Demonstrated Success in Hiring and Retaining District Employees* (the Report).

While DOES appreciates the efforts of ODCA in compiling this report, it must respectfully differ from ODCA regarding its conclusions on the key points as outlined under “Results” on page 10 of the report. DOES submits its written response to ODCA’s report as follows:

I. A failure of the Mayor to implement many of the requirements of the law.¹²

¹ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 10, 12,

The Mayor recognizes the importance of establishing policies designed to strengthen compliance with the First Source Law. To that end, OFSC has developed a new Standard Operating Procedure and Operations Plan and under the current Mayor OFSC levied the first source fine in the program's 20 year history. These procedures will increase the effectiveness with which OFSC monitors, and enforces, compliance with the provisions of the Law. As ODCA noted on page 26 of the Report, "[m]any of the procedures in the SOPs, if effectively implemented, will correct many of the monitoring and oversight deficiencies cited in our audit report and succeeding white paper." These plans have undergone DOES legal review and have been deemed legally sufficient.

Further, both DOES and OFSC have come under new leadership since the scope of time for which the Report is concerned. New leadership has taken significant steps to enhance First Source monitoring capabilities. For instance, DOES will soon hire additional staff to help expand its monitoring, and general enforcement, capabilities. DOES will continue to assess the progress and effectiveness of OFSC as it strives to enforcement compliance with the Law.

II. A failure of former DOES senior officials to effectively implement requirements of the Law, at their own discretion, most specifically related to the assessment of allowable penalties.³

As of December 2016, DOES began imposing penalties against companies determined to be in violation of the First Source Law. As a result of this new policy, \$61,279.56 has been collected and deposited into the Job Training Fund. Going forward, DOES intends to impose penalties against violators with increasing regularity.

III. A failure of coordination among numerous District agencies to ensure effective implementation.⁴

In an effort to ensure effective implementation of the First Source Law, DOES has collaborated with multiple District agencies to raise awareness about the Law. Particularly, DOES, along with other District agencies, have hosted numerous webinars and training events focusing on the First Source Law. The following events were presented in FY17 and FY18:

OFSC EVENTS – Exhibit A

² As ODCA's report acknowledges, "Mayor's Order 2018-010 was issued January 10, 2018 delegating many of the Mayor's responsibilities." Mirroring OCDA's approach, DOES' response will assume the "rules and responsibilities that were in effect during the scope" of ODCA's review.

³ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 12 (Note: It is difficult to determine whether the audit report posits proper "issuance" of a penalty or an "assessment" of if the penalty amount is appropriate)

⁴ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 25

Date	Time	Name of Training	Audience
April 26, 2017	10:00am – 12noon	Construction Roundtable	General Contractors
June 15, 2017	10:00am – 12:00pm	First Source Employment Agreement Requirements	Non Construction Contracting Agencies
June 15, 2017	2:00pm – 4:00pm	First Source Employment Agreement Requirements	Construction Contracting Agencies
December 13, 2017	10:00am – 12noon	First Source Employment Agreement Requirements	DHCD Representatives and contractors
February 21, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
February 22, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
March 7, 2018	10:00am-12:00pm	First Source Employment Agreement Requirements	Contracting Agencies Non-Construction
March 7, 2018	1:00am-3:00pm	First Source Employment Agreement Requirements	Contracting Agencies Construction
March 22, 2018	10:00am – 12:00pm	DSLBD CBE Vendors Training	Construction and Non-Construction

Further, within the drafted municipal regulations for First Source law, the Department of General Services must provide a list of contract awards over \$300,000 to DOES on the 1st of each month. Further coordination and education efforts are underway with District agencies that issue contract awards.

IV. A failure in the Law to clearly delegate specific responsibilities to District agencies or to the beneficiaries receiving government assistance.

Lawmaking, and the failure of any law to “clearly delegate specific responsibilities”, is the province of Council. For the purposes of this response, DOES takes no position with regard to this OCDA finding.

However, in order to aid with the delegation of specific duties under the Law, the Mayor has issued Mayor’s Order 2018-010⁵. Drawing from the responsibilities clearly delegated to the Mayor under the Law, Mayor’s Order 2018-010 makes clear delegation of specific responsibilities to appropriate officials within District government.

V. A lack of sufficient resources to effectively monitor the program.

DOES recognizes the need for increased staff resources within OFSC and has assigned two additional positions to assist the Office with its monitoring efforts.

⁵ Please see Exhibit E.

VI. DOES is not able to determine that contractors are giving first preference to District residents because the source of job referrals has not been consistently reported.

To clarify, D.C. Code § 2-219.03(b) (1) requires that first preference be given to unemployed District residents and not District residents whom may be employed. DOES is currently updating the coding in the First Source register to distinguish between residents registered as unemployed and presently employed residents.

On April 15, 2018 DOES will begin using a communications system designed to send First Source job alerts to unemployed District residents. In addition, residents registered with DOES' American Job Center, will be advised of First Source related opportunities directly from their assigned case managers. DOES continues to seek, and internally develop, new methods through which it can inform unemployed District residents of opportunities available to them pursuant to the First Source Law.

VII. The requirement to have an employment agreement on file with all First Source contractors has not been consistently met. Of the 124 contracts over \$300,000 awarded by the Department of General Services in FY 2016 ODCA could not find employment agreements at DOES for 30 of these awards, which totaled \$22 million in government assistance.

While the agency appreciates ODCA's efforts in researching this finding, the facts uncovered are not strictly within the control of DOES. DOES is working diligently with the Department of General Services to ensure that DOES is apprised of all contracts and projects requiring a First Source Employment Agreement. Moreover, DOES and DGS are fully committed to ensuring that each contract and project contemplated by the First Source Law will include the required First Source Employment Agreement.

VIII. The law requires hiring compliance forms to be filed with DOES each month following the start of the contract or project, and from the sample of 27 projects reviewed by ODCA, not a single monthly reporting form was submitted containing all 11 required reporting elements.

DOES has recently implemented a new electronic reporting system which mandates submission of data corresponding to each of the 11 required reporting elements.⁶ Employers will be required to make submissions once monthly.

To clarify, however, there is no First Source Contract or Project that would require all 11 reporting requirements. A Contract or Project would either be between \$300,000 and \$5,000,000 requiring the 7 points of data, or be in excess of \$5,000,000 and require the 4 points of data concerning the hours worked percentages.

⁶ Please see Exhibit C for an example of the newly adopted electronic form.

Further, although First Source law requires a monthly report of a Contract's or Project's indirect and direct labor cost, this information is only used to assess a penalty, if applicable, at the end of the project. DOES made an economic decision to require this information upon the issuance of a penalty for failure to report monthly or failure to meet the applicable requirements at the project's end.

IX. A beneficiary's revised employment plan is required once the contract or project has been given final approval. At the time of our review, DOES indicated that they had never received a copy of a single revised employment plan.

OFSC's new SOP includes procedures for ensuring compliance with the First Source Law's revised employment plan provision. Additionally, OFSC now requires beneficiaries to complete a revised employment plan form.⁷ However, OFSC has always received with Employment Plans attached that demonstrated hiring projections of new hires that were also submitted to the DOES Business Services Group to make District resident referrals or, in some cases, work in partnership with the Beneficiary to conduct a hiring fair.

X. Contractors are required to submit a report detailing compliance with provisions of the law, or seeking a waiver of compliance, as part of the final request for payment from the District and DOES conceded this requirement has not been met.

DOES takes compliance with the First Source Law very seriously. Requiring contractors to submit a final compliance report is instrumental to DOES' efforts to determine compliance. DOES works hard to educate other District agencies about the requirement that contractors submit a compliance report before final payment is made. Moreover, DOES endeavors to keep contracting agencies updated regarding the compliance status of their contractors. As DOES continues to improve these procedures, adherence to this requirement will also increase. Conversely, when a contractor fails to submit its report before final payment, DOES may still impose penalties if it determines that a violation has occurred. The process for imposition of penalties is set forth in the new OFSC SOP.

XI. [M]any of the employment plans attached to the employment agreements we reviewed projected few or no new hires.⁸

The First Source Law requires that District residents receive 51% of new positions created under contracts covered by the Law. Crucially, the Law does not require that the beneficiary engage in new hiring for a project. Neither does it require that 51% of all employees on a project be

⁷ Please see Exhibit G (page 6) for the section of the OFSC SOP relating to revised employment plans. Please see Exhibit H for a copy of the Revised Employment Plan Form.

⁸ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 16

District residents. Simply, the 51% threshold applies only when a beneficiary seeks to hire new employees to a covered project. The projection of “few or no new hires” is not evidence of a failure to properly enforce compliance by DOES.

XII. Although the District is required to review and assess the percentage hiring and reporting requirements once every three years, this has not been done.⁹

DOES’ assessment of percentage hiring and reporting requirements is currently in progress and expected to be completed by September 30, 2018. Once the assessment is complete, DOES will make a recommendation to Council regarding the feasibility of current hiring and reporting requirements.

OCDA’s report also includes a comparison between the District’s percentage hiring rates and those of other jurisdictions. While DOES appreciates the Report’s multi-jurisdictional comparison, it must be noted that the District’s percentage hiring requirements are higher than any other jurisdiction included. It is also noteworthy that the District out performed all other included jurisdictions in percentage hiring. This performance is testament to the Mayor’s leadership towards putting District residents back to work, and, DOES’ expertise in carrying out that vision. As the Report so clearly indicates, not only is the District performing well in terms of percentage hiring, but, it has become a national leader in this regard.

Jurisdiction	Key Hiring Requirement	Published Results
District of Columbia	For government-assisted projects or contracts receiving government assistance totaling between \$300,000 and \$5,000,000 at least 51% of the new employees hired on the project or contract shall be District residents. For government-assisted construction contract or project receiving government assistance totaling \$5 million or more:	January 2014-June 2014: 45.8% July 2014-December 2014: 40.5% January 2015-june 2015: 47.3% July 2015-December 2015: 51.7% January 2016-June 2016: 61.6%

⁹ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 12

	At least 20% of journey worker hours by trade shall be performed by District residents. At least 60% of apprentice hours by trade shall be performed by District residents. At least 51% of skilled laborer hours by trade shall be performed by District residents. At least 70% of common laborer hours by trade shall be performed by District residents.	July 201 –December 2016: 60.4% * Reported as % of District residents hired from contracts subject to First Source Agreements where the beneficiary receives government assistance between \$300,000 and \$5 million.³⁴ As previously stated, although the District has a percentage hour requirement for construction projects over \$5 million, they are not required by law to report publicly on these percentage hours.
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XIII. In the audit report on page 20, ODCA found that hiring statistics are not being effectively tracked or thoroughly verified and therefore may not provide a valid presentation of the effectiveness of the First Source program.¹⁰ ODCA posits that:

DOES is not effectively tracking or verifying the hiring statistics submitted to DOES.

The information submitted does not fully represent the current reporting system that is in place. Page four of the SOP details the scope of the records that OFSC reviews to confirm an employer's compliance with the law.¹¹ As written in the SOP, OFSC also performs a number of compliance activities.¹² Further, Employers are required to submit reports in FORRS. Once the information is submitted, OFSC reviews contractor employee records to monitor the hiring data and measure compliance. OFSC then reviews and verifies the data by reviewing payroll records, conducting desk reviews, and conducting social security verification.¹³

¹⁰ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 20

¹¹ Please see page 4 of Exhibit G

¹² Please see page 7 of Exhibit G

¹³ Please see Exhibit C for a snapshot of the contract compliance data submitted by employers

XIV. We were unable to verify the total level of government assistance due to the lack of accurate documentation.

The responsibility of providing the documentation required to determine the “total level of government assistance” has historically belonged to the contracting agency. Regardless, DOES has developed a strategy to increase the likelihood that this critical information is recorded and preserved as necessary. First, each forthcoming First Source Employment Agreement must clearly state the government-assisted amount for the project or contract.¹⁴ Second, OFSC’s SOP now requires the compliance monitor to input the government-assisted amount into the First Source Online Registration and Reporting System (FORRS).¹⁵

XV. We were unable to determine if DOES maintained a signed agreement for all contractors and subcontractors.

The First Source Law requires the contracting agency to provide DOES with a signed First Source Employment Agreement no fewer than seven (7) days prior to commencement of the project. Further, the First Source Law requires the contracting agency, and the General Contractor, to provide DOES with signed copies of all agreements meeting its threshold requirements.

In regards to the Duke Ellington matter, while all General Contractors are required to submit certified payroll records through the LCP Tracker, only those subcontractors that meet the \$300,000 contract threshold are required to enter into a First Source agreement.

XVI. We found that most of approved and signed agreements we reviewed contained employment plans. We identified plans, however, that did not provide a list of current employees, a list of projected positions, or justification for why no jobs would be created—all required fields on the employment plan.

While DOES appreciates these findings, pursuant to DC Code 2-219.03(f)(ii), beneficiaries are not required to report information corresponding to current employees as part of its employment plan. Data relating to current employees is submitted, as a monthly report, through FORRS. DOES is committed to ensuring that each employer provide all data required to be included with their employment plan.

¹⁴ Exhibit H

¹⁵ Exhibit H and C

The yearly report to the council does include data that is useful in assessing the effectiveness of First Source law and its implementation. For instance, the data below shows that the 51% hiring goal is consistently met or exceeded. There has been a steady increase in the percentage of District residents hired over the past few years.

XVII. We found significant issues with data consisting mainly of the failure of DOES to track certain contracts and missing monthly reports for each project. We identified six IDIQ contracts in our sample that were subject to a first source agreement yet DOES did not collect or maintain monthly report submissions for these contracts.

Three of the six indefinite delivery/indefinite quantity (IDIQ) contracts referenced were “located” outside of the DC metropolitan area. The other three IDIQ contracts were for “on-call” services. Pursuant to DC Code 2-219.03, a contract is exempt from the provisions of the Law when a beneficiary is, 1) located outside of the DC Metro area, and, 2) when none of the contract work is performed in the metro area.

Regarding “on-call” contracts, DOES must rely on the contracting agency to inform it when services are being performed. Before receiving such information, DOES would be unaware of the need to perform monitoring.

XVIII. DOES did not track the amount of time that a new hire stays employed on a project, nor do they track the hiring rates for trend analysis to measure the effectiveness of beneficiaries in keeping District residents employed once they are hired.¹⁶

While the agency appreciates this finding, as noted on page 21 of the audit report, the Law does not require DOES to track the length of time that a new hire spends working on a project. In addition, the First Source Law does not require DOES to utilize employment statistics to determine trends in new hire retention. However, if so directed, data collected as part of DOES’ semi-annual report to Council could be used for trend analysis.

DOES Data Trend Analysis from Data Collected from Semi-Annual Reports January 2014 – December 2016		
Reporting Period	Goal	Actual %
January 2014 - June 2014	51%	45.8%
July 2014 -December 2014	51%	40.5%

¹⁶ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 12

January 2015 - June 2015	51%	47.3%
July 2015 - December 2015	51%	51.7%
January 2016 - June 2016	51%	61.6%
July 2016 - December 2016	51%	60.4%

XIX. DOES did not have a standardized practice for validating a beneficiary's monthly report submission through a review of a beneficiary's payroll records. Further, ODCA has noted that DOES accepted monthly reports that did not contain required information such as names of hired employees, address of employees hired, and Social Security Numbers as supporting documentation.

DOES continually strives to ensure that the agency is eliciting all data required pursuant to the First Source Law. DOES utilizes a number of methods to insure the completeness and accuracy of employment records, including the following:

- Site visits (**Exhibit I**)
- Review of payroll records
- Surveys
- Desk reviews (**Exhibit I**)

OFSC conducts periodic desk reviews to confirm that all documentation is complete and accurate including a signed First Source agreement, the Subcontractor award list, verification that Contractors are reporting online in the FORRS and that they are including employment plan projections, and the start and end date for the scope of work. OFSC will also conduct the desk review to verify that the Contractor is meeting the requirements for hiring and hours worked percentages. Once the review process concludes, OFSC monitors work with the Contractors to develop a corrective action plan and will perform follow-up as needed.¹⁷

- Social security verification

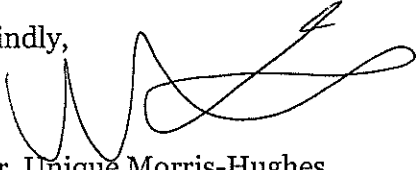
Since the timeframe analyzed in this report, FY14 through FY16, DOES has taken corrective action to address this shortcoming. Amongst these actions is the implementation of an operations

¹⁷ Please see Exhibit D for a sample Desk Review

plan which has improved many aspects of OFSC's performance, including the accurate recording of critical data, additional staff for monitoring, and enforcement of penalties.

Please let me know if you have any questions.

Kindly,

A handwritten signature in black ink, appearing to read 'U. Morris-Hughes', with a stylized flourish at the end.

Dr. Unique Morris-Hughes
Director, Interim

cc: Courtney R. Snowden, DMGEO
Betsy Cavendish, General Counsel, Executive Office of the Mayor
Rashad Young, City Administrator
Mohammad Sheikh, Deputy Director, Labor Standards Bureau, DOES
Michael Watts, Associate Director, Office of Wage Hour, DOES
Aniema Udofa, Associate Director, Compliance and Independent Monitoring, DOES

ODCA Response to Agency Comments

We were encouraged by DOES's response to our findings in that they concurred and expressed that certain actions were in progress to address deficiencies cited in our report. Based on ODCA's exit conference with DOES, additional information provided by DOES, and our review of written comments, we have revised the draft report where applicable.

Although DOES included in their written comments to the draft report an outline of progress made in the current fiscal year, most of these actions were not occurring during the scope of our audit and the effective implementation of these actions cannot be evaluated and tested until sufficient time has elapsed.

Although DOES did not specifically address each of our recommendations in the report, we will include a recommendation compliance form with our final report. These forms will request DOES's actions toward implementing each recommendation and we will follow up with DOES on a regularly scheduled basis to determine DOES's compliance.

We also offer the following response to a specific DOES Response:

DOES Response:

DOES OFSC monitored and continues to monitor every project or contract that is subject to the Act, when the employment agreement is provided to DOES by the Office of Contracting and Procurement (OCP) and agencies with independent contracting authority, pursuant to the Act.

Auditor's Response:

We recognize that DOES can only monitor contracts or projects of which they are aware, or when an employment agreement is provided to DOES. We noted this as a deficiency in our report and continue to reiterate our recommendations on page 11 of this report to ensure that each beneficiary that is required by Law to enter into an employment agreement with the District does so and effective monitoring of each beneficiary can be conducted.

Appendix A
Mayor's Order 2018-10 Effective 1/10/18

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2018-010
January 10, 2018

SUBJECT: Delegation of Authority – Director of the Department of Employment Services and Chief Procurement Officer, under the First Source Employment Agreement Act of 1984 and the First Source Compliance Act of 2008

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), and in accordance with the First Source Employment Agreement Act of 1984, effective June 29, 1984, D.C. Law 5-93; D.C. Official Code § 2-219.01 *et seq.* (2016 Repl.) (“**First Source Act**”), and the First Source Compliance Act of 2008, effective August 16, 2008, D.C. Law 17-219; D.C. Official Code § 2-219.31 *et seq.* (2016 Repl.) (“**First Source Compliance Act**”), it is hereby **ORDERED** that:

1. The Director of the Department of Employment Services (“**DOES Director**”) is delegated the authority of the Mayor under the First Source Act, except for the authority under section 4a(b) (D.C. Official Code § 2-219.03a(b)), and the authority delegated to the Chief Procurement Officer under paragraph 3 of this Order. The authority delegated to the DOES Director under this paragraph includes the authority to:
 - a. Maintain the First Source Register and contact various entities and organizations for names of unemployed District residents under section 3 of the First Source Act (D.C. Official Code § 2.219.02);
 - b. Require that beneficiaries awarded a project or contract with government assistance enter into any agreement with the District of Columbia government required under section 4 of the First Source Act (D.C. Official Code § 2-219.03);
 - c. Grant or deny waiver requests under section 4(e)(3)(A) and (B) of the First Source Act (D.C. Official Code § 2-219.03(e)(3)(A) and (B));
 - d. At least once every three (3) years, conduct a new review of the hiring and reporting requirements set forth in section 4(e)(1A) of the First Source Act (D.C. Official Code § 2-219.03(e)(1A)) and make any required findings in a report to the Council, pursuant to section 4(e)(1A)(I) of the First Source Act (D.C. Official Code § 2-219.03(e)(1A)(I));
 - e. Require all beneficiaries of government-assisted projects or covered contracts that are not awarded through the contracting process to develop and submit to DOES

an employment plan, and approve any amendments to that employment plan pursuant to section 4(e)(1A)(F)(iii) and (iv) of the First Source Act (D.C. Official Code § 2.219.03(e)(1A)(F)(iii) and (iv) and section 4(e)(1C)(iii) and (iv) of the First Source Act (D.C. Official Code § 2-219.03(e)(1C)(iii) and (iv));

- f. Impose fines and penalties under section 4(e)(4)(A) and (B) of the First Source Act (D.C. Official Code § 2.219.03(e)(4)(A) and (B));
 - g. Deem a person or entity ineligible for consideration for government assisted-projects under section 4(e)(4)(C) of the First Source Act (D.C. Official Code § 2.219.03(e)(4)(C));
 - h. Enter into special hiring agreements under section 4a of the First Source Act (D.C. Official Code § 2-219.03a);
 - i. Submit the semiannual report under section 5 of the First Source Act (D.C. Official Code § 2-219.04);
 - j. Establish a workforce intermediary pilot program and Workforce Intermediary Task Force under section 5b of the First Source Act (D.C. Official Code § 2-219.04b);
 - k. Issue rules to implement the First Source Act, under section 6 and section 4(e)(1B), and (1C)(F) of the Act (D.C. Official Code §§ 2-219.05 and 2.219.03(e)(1B) and (1C)(F)).
- 2. The DOES Director is delegated the authority of the Mayor under section 1021(a)(3) of the First Source Compliance Act (D.C. Official Code § 2-219.34(a)(3)).
 - 3. The Director of DOES may further delegate any of his or her authority under this Order, except the authority to issues rules, to subordinates under his or her jurisdiction.
 - 4. The Chief Procurement Officer of the Office of Contracting and Procurement (“CPO”) is delegated the authority of the Mayor under the First Source Act to:
 - a. Transmit each employment agreement to the Department of Employment Services under section 4(c) of the First Source Act (D.C. Official Code § 2-219.03(c));
 - b. Evaluate and score bid proposals under section 4(e)(1A)(F)(i) of the First Source Act (D.C. Official Code § 219.03(e)(1A)(F)(i)); and
 - c. Debar a person or entity under section 4(e)(4)(C) of the First Source Act (D.C. Official Code § 2.219.03(e)(4)(C)).
 - 5. The CPO may further delegate any of his or her authority under this Order to subordinates under his or her jurisdiction.

6. Mayor's Order 86-66, dated April 22, 1986, and Mayor's Order 2011-47, dated February 23, 2011, are rescinded.
7. This Order supersedes any previous Mayor's Orders to the extent of any inconsistency therein.
8. Any actions taken by the DOES Director since October 1, 2014 to impose any fines or penalties pursuant to section 4(e)(4)(A) and (B) of the First Source Act (D.C. Official Code § 2.219.03(e)(4)(A) and (B)) are hereby confirmed and ratified retroactively as actions of the Mayor of the District of Columbia as of the date the actions were taken by the Director of DOES.
9. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to October 1, 2014.


MURIEL BOWSER
MAYOR

ATTEST: 
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA