

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

January 30, 2017

The Honorable Elissa Silverman
Councilmember, At-Large
Chairperson, Committee on Labor and Workforce Development
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 408
Washington, DC 20004

Dear Councilmember Silverman:

This letter is in response to your communication dated January 18, 2017, regarding the Department of Employment Services, hiring and monitoring efforts for the First Source Employment Program. Below are the agency responses to your questions:

Question 1.

A clear delineation of which office within DOES is responsible for monitoring compliance with First Source agreements, especially when those agreements are not explicitly required by law.

Response:

The Office of First Source Compliance, under the purview of the Office of Labor Law and Enforcement (OLLE), formerly the Office of Wage-Hour, manages, monitors and enforces all First Source Employment Agreements.

Question 1.a.

1. A detailed explanation of how the office validates reported hiring information from employers under First Source Agreements.

Response:

The Office of First Source Compliance validates reported hiring data through the submission of monthly contract compliance reports and data by employers in the First Source Online Registration and Reporting System (FORRS). Additionally, the Office of First Source Compliance validates compliance with first source hiring requirements through monitoring that includes meeting with employers, conducting desk reviews and site visits.

Question 2.

A clear delineation of which office within DOES is responsible for monitoring compliance with other hiring requirements, such as tax breaks given to the Line Hotel.

Response:

The Office of First Source Compliance monitors all hiring requirements under First Source Employment Agreements. The Line Hotel does not have a typical First Source Employment Agreement. D.C. Official Code § 47-4652 (a) sets forth the first source requirements that, if met, would qualify the Line Hotel to receive a tax abatement. As such, the First Source Employment Agreement contains the first source requirements from D.C. Official Code § 47-4652 (a). The Office of First Source Compliance is monitoring the Line Hotel First Source Employment Agreement.

Question 3.

A narrative explanation of how DOES identifies community benefits agreements or other hiring requirements it is required to track or monitor.

Response:

The Office of First Source Compliance enforces community benefits that are legislated and/or contractually part of the First Source Employment Agreements. The Office of First Source Compliance also conducts additional research on legislation, District requirements, and laws to ensure that these are included in the First Source Employment Agreements and monitored accordingly.

Question 4.

A narrative explanation of any changes in the structure of the offices referenced in Questions #1, 2, and 3 in 2016 designed to improve monitoring of compliance in response to the Auditor's report.

Response:

In October 2016, the Office of First Source Compliance was placed under the leadership of the Associate Director for the Office of Labor Law and Enforcement (OLLE). Under OLLE, the Associate Director developed a six-month Operations Plan for the Office of First Source Compliance. This plan established new policies and procedures to strengthen and improve First Source operations.

The goals of the plan include the following:

1. Establishing processes and procedures for the team to make informed compliance decisions and enforcement actions supported by complete, accurate and valid data.
2. Establishing internal operational processes and procedures for all First Source related duties and responsibilities.
3. Improving staff effectiveness through continued education, training requirements and innovative tools and technologies.
4. Connecting stakeholders and aligning them with strong compliance practices and principles.

Question 5.

An explanation of which office has been monitoring the compliance at the Line Hotel project. Given Director Carroll's letter of October 28th, which makes clear that the developer is unlikely to meet its hiring targets, at which point was that apparent? Did DOES meet or communicate with the developer to alert them to the fact they were unlikely to meet their hiring targets? If so, when? Has DOES worked with the developer to create an action plan to meet their obligations? If so, when was this plan created?

Response:

The Office of First Source Compliance monitors the Sydell Group's (Line Hotel Developer) compliance with its hiring targets. The Department of Employment Services met with the developer on April 20, 2016, September 19, 2016, and December 5, 2016, to discuss their progress related to the hiring targets for the Line Hotel. Additionally, the Office of First Source Compliance met with the developer on November 15, 2016; December 6, 2016; and January 10, 2017 to discuss non- construction hiring targets. Further, the Office of First Source Compliance met with the developer on: April 14, 2015; August 21, 2015; April 6, 2016; April 20, 2016; June 3, 2016; August 26, 2016; September 13, 2016; October 13, 2016; October 20, 2016; November 15, 2016; December 6, 2016; and January 10, 2017 to discuss construction hiring targets. DOES and the Sydell Group agreed in October 13 2016, to submit weekly reports detailing their construction hiring and hours worked targets.

In October 2016, the First Source Employment Program was transferred to OLLE. At that time, the Director was informed in a deliberative process privileged communication regarding the developer's probable inability to meet their targets. This past year during the meetings with the developer, DOES continually raised its concerns with the employer regarding their hiring and hours' worked plan. Based on those concerns, it was decided to start collecting weekly reports on October 13, 2016 and then directly from Sydell rather the subcontractors on November 29, 2016, so that the agency could continue to closely monitor their progress.

Question 6.

What steps are being taken to ensure that future employers, who are not fulfilling their employment obligations, either through First Source Agreements, District Laws, or community benefit agreements, are identified or notified earlier in the process? Are there any steps DOES can take to help such future employers meet their obligations?

Response:

The Office of First Source Compliance implemented the following steps and protocols to ensure that employers are notified promptly of their First Source obligations, specific hiring or workforce requirements, or any additional legislative requirements

First Source Program Monitoring Activities:

1. Review all contracts to determine if the employer is subject to D.C. Official Code § 2-219.01 et seq.
2. Notify stakeholders and company officials and establish meetings, conduct training, and provide technical assistance involving the First Source Agreement requirements and First Source Reporting Process.

3. Educate employers about additional services offered by DOES such as tax incentives for employers who hire from certain categories.
4. Provide informational materials to DOES Business Services Group (BSG) offerings, which include providing referrals of qualified District candidates and ensuring that employers are registering in DC Networks-Virtual One Stop (VOS), and posting positions in VOS.
5. Monitor Employment Plan Job Creation Projections with BSG and employers to ensure qualified District candidates are being referred and hired.
6. Review hours worked percentages through the Labor Compliance Program Tracker (LCP Tracker) which totals the hours worked and percentages per classification from the weekly upload of certified payrolls by Employers.
 - First Source staff will confirm that the employee listed as “Hard to Employ” is certified under the Hard to Employ categories through review of the Automatized Client Eligibility Determination System (ACEDS) and Department of Human Services. First Source member employer can double count hours worked up to 15% of total hours worked by District Residents.
7. First Source reviews the hiring of District Resident requirement through First Source On-Line Registration & Reporting System to assure all employers subject to the First Source Agreement are meeting the 51% new hiring of District resident requirement.
8. Conduct desk reviews of the First Source on-line reporting data and LCP Tracker data submitted and certified by the employers, review compliance with the First Source Employment Agreement requirements.
9. Conduct site visits to meet with the General Contractor to review the subcontractor’s compliance with the First Source requirements.
10. Meet with individual subcontractors on an as-needed basis to discuss compliance issues or good faith efforts.
11. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Employment Agreement to all contracting agencies and stakeholders.

First Source Final Report:

The employer submits their final Contract Compliance report data through the First Source Portal. The First Source staff reviews the final workforce statistics to determine if the employer has met the First Source hiring or hours worked percentages. First Source staff enters case notes into the Employer Agreement, finalizes the hiring statistics, and then changes the Agreement from active to complete. If the employer does not meet the hiring or hours worked percentages, staff initiates the Good Faith Efforts (GFE) process and issues or remedies a potential fines determination for noncompliance.

Determination of a Good Faith Effort to Comply Process:

Waiver Request

DOES may waive the hiring or hours worked percentage requirements for all jobs created by the Project, and, the required percentages of DC residents in all Job Classifications areas on the Project, if DOES finds that:

- Employer demonstrated good faith efforts to comply with their First Source Employment Agreement.

- Employer is located outside the Washington Metropolitan Statistical Area, and none of the contract work is performed inside the Washington Metropolitan Statistical Area.
- The employer entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary; or
- DOES certified that there are insufficient numbers of DC residents in the labor market possessing the skills required by the employer for the positions created as a result of the project. No failure by employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.

Waiver Request Approval or Denial Process:

1. Steps First Source performs when an employer requests a waiver:

- First Source Investigator requests a justification letter for a Waiver Request from the employer.
- First Source Investigator reviews employers good faith efforts.
- First Source Investigator schedules a meeting or conference call with the employer.
- First Source Investigator confirms with BSG recruitment efforts of the employer; registration in DCNetworks (Virtual One Stop), postings and participation in hiring fairs.
- First Source Investigator makes a recommendation to the Associate Director if the employer meets or does not meet the statutory requirements for a waiver of the First Source Program requirements.
- Associate Director determines and approves the decision of granting or not granting the waiver request.
- Associate Director signs the official letter of First Source Program Notice of Determination.
- First Source forwards an official letter of First Source Program Notice of Determination to the employer with a copy to the Associate Director, First Source Program Manager and relevant stakeholders.
- All waiver request documentation is to be filed electronically on the First Source shared drive in the FS/Document/Waiver Request Folder and a hard copy placed into the project folder.

2. The First Source monitor must assure that the following good faith efforts are being performed by the Employer:

- Whether the employer posted the jobs on the DOES job website for a minimum of 10 calendar days.
- Whether the employer advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days.
- Whether the employer advertised each job opening in a special interest publications and or special interest media for a minimum of 7 calendar days.
- Whether the employer hosted informational/recruiting or hiring fairs;
- Whether the employer contacted churches, unions, and/or additional Workforce Development Organizations.
- Whether the employer interviewed employable candidates;
- Whether the employer created or participated in a workforce development program approved by DOES.
- Whether the employer created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary.

- Whether the employer has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and
- Any additional documented efforts.

3. Penalty Process:

- First Source requests the direct and indirect labor cost from the employer which may be available from certified payroll.
- First Source will print final contract compliance data report to review the deficiency in meeting the hiring or hours worked percentage requirement.
- First Source will use the penalty calculation spreadsheet to calculate the fine.
- The penalty will equal to 1/8 of 1% of the total amount of the direct and indirect costs of the project or contract for each percentage by which the beneficiary fails to meet the hiring or hours worked percentages.
- Willful breach of the Agreement by the employer, failure to submit the contract compliance reports, deliberate submission of falsified data may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the project or contract.
- First Source will provide the Associate Director with their recommendation of the waiver request and provide all relevant data.
- Associate Director will provide to employer the notice of determination.
- First Source will file the notice on the shared drive.
- First Source will prepare all relevant documents if the beneficiary appeals the decision of DOES. If Associate Director received an appeal from the employer the Associate Director will review the appeal, make recommendation and forward all relevant documentation to the Contract Appeals Board who will make the decision of the appeal.

Public Education

The First Source Program is initiating a Public Education series which will include webinars and Business Roundtables and trainings for businesses to raise awareness of the First Source Requirements.

Question 7.

What kind of communication occurs between the agencies monitoring compliance and the Office of Tax and Revenue, which approves Tax abatements? When does this communication take place?

Response:

Prior to finalizing all First Source Employment Agreements, the Office of First Source Compliance communicates with DMPED, OTR, contracting agencies and any other relevant agency regarding First Source Employment Agreements. The contracting agency is responsible for submitting First Source Employment Agreements and any additional legislative requirements to the Office of First Source Compliance for review, acceptance and execution. The Office of First Source Compliance then conducts additional research to ensure that all additional requirements are included in the First Source Agreement.

I trust that this information responds to your inquiry. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Odie Donald II', with a long horizontal flourish extending to the right.

Odie Donald II
Acting Director