



Council of the District of Columbia
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May 22, 2018

Unique Morris-Hughes
Interim Director
Department of Employment Services
4058 Minnesota Ave NE
Washington, DC 20019

Dear Director Morris-Hughes:

The Committee on Labor and Workforce Development has scheduled a public oversight roundtable on the District of Columbia's First Source Hiring Law for Thursday, June 21, 2018, at 11:00 a.m. Thank you for arranging to testify. In order to discuss and have a better understanding of the daily workings of the Office of First Source Compliance (OFSC), the Committee also requests that the OFSC supervisor, Terry Kenner, join you at the witness table.

To help prepare for the roundtable, the Committee is providing the questions below. Please submit your responses to Senior Advisor Daniel Savery at dsavery@dccouncil.us no later than close of business **Thursday, June 14, 2018**.

You and I have discussed having regular staff-level meetings, and I think we both agree that past meetings have been extremely useful. They have helped Committee staff have a better understanding of DOES's processes and work so that we can have more informed discussion at hearings. I believe the same would be true in advance of this roundtable. As such, I request a staff-level meeting the week of June 11th.

We look forward to seeing you at the roundtable on June 21. If you need to discuss any of these matters, please contact my Committee staff at (202) 724-4902.

Sincerely,

A handwritten signature in black ink, appearing to read "Elissa Silverman".

Elissa Silverman
Chair, Committee on Labor and Workforce Development
Council of the District of Columbia

Pre-Roundtable Questions on First Source

Data template. Please complete/update the attached spreadsheets in Excel (3 tabs), which are updated from pre-performance oversight questions following discussion at the performance hearing.¹

- Tabs 1 and 2: Please combine the previously submitted 6-month spreadsheets into two annual spreadsheets: (1) all agreements in FY17 and FY18 to date that are subject to the 51% new hires requirement (not one for January-June and another for July-December 2017), and (2) all agreements in FY17 and FY18 to date that are subject to the four different hours requirements (i.e., construction projects with \$5 million or more government assistance). The Committee has edited column headings to provide additional clarity on information requested and added a column for ward of the project. Please double check all data previously submitted, paying particular attention to the *shaded* columns and rows, as these were either not filled out or contained inconsistencies.
- Tab 3: For any projects for which penalties were issued, including the 8 mentioned by Director Donald in the March 15 performance oversight hearing, please also fill out the new, attached spreadsheet provided by the committee with additional details on the penalties.

Please provide written responses to the following questions.

General

1. In its response to the Auditor regarding the Auditor's report,² DOES stated that it is making several technological updates.³ What is the timeline for completing these updates? Does DOES plan other technological updates? If so, please describe the content and timeline.
2. The public First Source Online Registration and Reporting System (FORRS) webpage⁴ includes a "Status of Compliance" column where beneficiaries subject to the law are listed as "in progress," "met requirements," "did not meet requirements," or "contact First Source." Some are also blank. This was also noted in the Committee's FY19 budget

¹ DOES' Performance oversight responses available at <http://dccouncil.us/budget/2019/labor-workforce-development>; see Attachment 27 for original First Source data template.

² DOES, "DOES Response to First Source White Paper," available at <http://www.dcauditor.org/sites/default/files/DOES.First..Source.Response.Attachments.B.thru..I.0.pdf>.

³ The updates are:

- a. Updating the First Source Online Registration and Reporting System (FORRS), including that the "referral source data [from where a project's new hires are referred] is currently in development stage to be captured";
- b. "Moving forward the [Office of First Source Compliance] (OFSC) will be capturing the direct and indirect labor cost in FORRS on a monthly basis;" and
- c. "DOES is currently updating the coding in the First Source register to distinguish between residents registered as unemployed and presently employed residents."

⁴ FORSS website available at [https://webapps.does.dc.gov/ExecutedFirstSourceAgreements/\(S\(uzoh3lrli0ib1xe3w55woxg2\)\)/Agreement/FSAgreementsPublicAccess](https://webapps.does.dc.gov/ExecutedFirstSourceAgreements/(S(uzoh3lrli0ib1xe3w55woxg2))/Agreement/FSAgreementsPublicAccess).

report and recommendations. Is DOES updating FORRS to ensure that the compliance status is public for each project, either by listing the status or explaining why the status is unknown or not reported?

3. At least once every three years, DOES is required by law to review the hours and reporting requirements for the construction projects over \$5 million to determine their appropriateness and make findings in a report to the Council. In its responses to the Auditor, DOES stated that the Department will complete its assessment by September 30. When does DOES expect to make its recommendation to the Council?
4. In its pre-performance hearing responses (#76), DOES was unable to report the number of hires on First Source projects in FY18, stating that the Department is “updating software to rectify the timeliness of reporting issues.” Please elaborate as to what exactly this means. Is the Department currently tracking the compliance of active First Source projects?

First Source Register

5. What is the specific URL where an employer can view names of individuals on the Register?
6. Please provide the Committee with an Excel spreadsheet with information for everyone currently on the Register, including: Date individual was added to the register; ANC of residence; and whether or not the individual is receiving unemployment insurance. What additional information does the Department maintain on registrants?
7. Please describe the mechanics of the referral process. How does DOES go about selecting the specific individuals in the First Source register to refer for interviews?
8. How does DOES meet the statutory requirement to refer for interviews individuals on the register who are unemployed and not receiving unemployment insurance, given that the Department still needs to update the coding to determine whether or not the individual is still unemployed (see Footnote 3)?
9. Please describe the process by which DOES selects individuals in the specific ANCs of projects and refers them for interviews? By what process does the Department determine that an individual that it plans to refer for an interview still lives in the ANC of the project?
10. The law states that in compiling and maintaining the Register, DOES is to contact ANCs, community groups, and others for names of unemployed residents. Please provide a list of any ANCs or community groups from which names were received in FY17. How many people did DOES add to the Register as a result of these efforts in FY17? In FY18, through May 1?

Enforcement

11. How many total First Source agreements is the Department currently monitoring?
12. How many projects and employers in total were found to not be in full compliance in FY17? How many in FY18, as of May 1?
13. Along with their final request for payment, contractors are required to submit a report detailing their compliance with First Source or request a waiver. The Auditor reported

that DOES conceded that this requirement has not been met. Have any contractors submitted these reports since FY16? If not, by what process has DOES issued non-compliance letters and assessed penalties?

14. In its March 2018 report on the Office of Contracting and Procurement, the Office of the Inspector General noted: “Given that numerous agencies issue task orders during a 5-year contract period, it is...unclear what constitutes the Contractor’s ‘final request for payment from the District,’ and as such, when compliance with the hiring requirement should be verified.”⁵ Has DOES discussed with OCP and DGS how to clarify for contractors what the “final request for payment” means?
15. In the latest semi-annual report covering the second half of 2017, the Department reported that it “conducted 3,000 total compliance related reviews (including desk audits).”
 - a. How does DOES select a project or contractor to review? What are the parameters for choosing a company to review for an audit? For a site visit? Is there an algorithm the Department uses to automatically generate companies to review? Or do you use targeted investigations that go to where problems are suspected based on certain factors? What are those factors?
 - b. What is the breakdown by type of review in the most recent period – how many of the 3,000 were desk audits? How many projects did this involve?
 - c. How many of the 3,000 compliance reviews were site visits? How many projects did this involve?
16. How does DOES verify DC residency when reported by employers? What data sources and processes are used?
17. In its review of 124 contracts over \$300,000 awarded by DGS in FY16, the Auditor could not find employment agreements at DOES for 30 of these awards, which totaled \$22 million in government assistance.
 - a. How many of the 30 awards are still active?
 - b. Of those, how many have now signed employment agreements?
 - c. Please describe any other efforts DOES and DGS are making to ensure that unemployed District residents are getting hired on these projects.
18. Is there a reporting mechanism for members of the community who either know or have concerns that a First Source agreement isn’t being upheld? Please describe the process.

Semi-Annual Reports

19. The July-December 2017 report⁶ stated that while 602 employment agreements were received, there were only 38 job openings in that time period.

⁵ District of Columbia Office of the Inspector General “Office of Contracting and Procurement, Evaluation of Selected D.C. Supply Schedule Temporary Support Services Contracts” (March 2018) available at <http://app.oig.dc.gov/news/view2.asp?url=release10%2FOIG+No%2E+18-I-02PO+-+Evaluation+of+DCSS+Temporary+Staffing+Services+Contracts%2Epdf&mode=release&archived=0&month=000&agency=0>

⁶ DOES, “First Employment program Semi-Annual Reporting Summary,” July-December 2017 available at <http://lims.dccouncil.us/Download/39887/RC22-0146-Introduction.pdf>.

- a. Please explain why this number is so low, particularly compared to the 436 jobs the Committee recently saw listed on the “Find a First Source job” page on DC Networks.
 - b. Please explain how 1,658 individuals were hired from only 38 job openings.
20. Is the “number of individuals hired on contracts subject to First Source agreements” measuring people on *all* First Source projects or only those hired on *new* agreements received during that period?
 21. The number of DC residents on the First Source register has fluctuated over the last three periods – from 6,847 to 4,290 to 6,503. To what does DOES attribute this fluctuation?
 22. Per the previous question, the number of individuals on the register dropped by 2,557 during the first half of 2017. 902 DC residents were hired on First Source projects during the first half of 2017. Of the other 1,655 residents that had been in the register, how many of them are employed through other means?
 23. What is the average length of time the current 6,503 individuals have been on the register (or a general average if DOES doesn’t have specific information on this cohort)?

Line Hotel

The owners of the Line Hotel are eligible for a tax abatement if they meet the following DC-resident hiring requirements:

- o 51% of construction hours;
 - o At least 342 construction full-time equivalent employees;
 - o 51% of permanent hotel jobs;
 - o 51% of the DC resident hotel jobs have to go to Ward 1 residents; and
 - o Apprenticeships need to be “reserved” for DC residents with a preference going to Ward 1 residents.
24. In its July 2012 First Source agreement, Adams Morgan Hotel Owner LLC (another name for the developer, Sydell) filled out the justification sheet that explains why they would not have any new hires on the project. Please explain, then, why the November 2017 “construction jobs and hours” report shows 55 construction jobs and more than 103,000 construction hours from the developer.
 - a. How has DOES monitored Sydell’s work to determine whether or not the developer was performing genuine construction work throughout the project and that should indeed be counted towards the total hours worked by DC residents? In other words, how does DOES confirm that the hours worked that have been reported by Sydell in the monthly reports was legitimate construction work?
 - b. And if the Owner was conducting legitimate construction work, did DOES require that the First Source employment agreement be amended to reflect that?
 25. The monthly “construction and hours” reports⁷ track “employees,” which is different than the “full-time equivalents” term used in the statutory requirements. For example, on the

⁷ DOES FY17-18 performance oversight hearing response attachments, “Attachment 26 Part 2,” available at http://dccouncil.us/files/user_uploads/budget_responses/DOES_Attachment_26_Part2.pdf

November report, Two Rivers Site Development is listed as having 13 total employees and two DC employees. However, the next column lists zero hours worked, which would suggest that the “employees” reported shouldn’t count towards the FTE tally.

- a. How does the Department track FTEs specifically (as opposed to “employees”)?
- b. The November report is the most recent one DOES submitted to the Committee.

Please provide reports through the end of April.

26. What is the Adams Morgan Youth Leadership Academy (AMYLEA) Expanded Program? They’re showing 230 employees on the project, all of which are DC residents – are they performing construction work?

The Wharf

In the semi-annual report covering July-December 2017, DOES reported that it was “in the process of closing out Phase 1 of the construction at the Wharf and reviewing the project’s compliance with First Source.”

27. Phase 1 opened on October 12th. Has Hoffman Madison Waterfront and/or the contractors submitted either its compliance report or waiver request?
28. When does the Department expect to complete its review of the Wharf’s phase 1 compliance with its First Source requirements? The Committee notes that FORRS lists several Wharf contractors as “Did not meet Requirements.” Please indicate the results on the Data Template.