

Testimony of

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Before the

Council of the District of Columbia

Committee on Labor and Workforce Development

Public Roundtable on

The District of Columbia's First Source Hiring Law

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Good morning, Councilmember Silverman and members of the Committee on Labor and Workforce Development. I am Lawrence Perry, Deputy Auditor for the Office of the District of Columbia Auditor (ODCA). I appreciate the opportunity to be here today to discuss the District's First Source Law and offer comments based on ODCA audit and evaluation work on this topic.

As you are aware, the First Source Program has been cited as an important part of the District of Columbia's strategy to provide job opportunities and reduce unemployment among District residents for more than 30 years. 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."

The First Source Law requires that the Mayor include for every government-assisted project or contract a requirement that the beneficiary enter into a First Source 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; and
- 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.

Given the significance of this Program, ODCA initiated an audit to review DOES's performance in managing the First Source program. As a companion to the audit, we also conducted an analysis to assess whether all the requirements of the Law have been implemented.

On April 19, 2018, we released our audit report, ***DOES Lacks Policies and Procedures to Effectively Monitor D.C.'s First Source Program***. Our review covered FY 2014 through FY 2016 and included a sample of 27 contracts and/or projects, which were a mix of construction, retail, non-construction, and mixed-development contracts or projects.

During our audit we found that:

- DOES was not monitoring all beneficiaries required to enter into a First Source Agreement. After reviewing and analyzing 124 contracts over \$300,000 awarded by the Department of General Services (DGS) during 2015 *we could not find documentation at DOES for 30 of those contract awards, which totaled approximately \$22 million.*
- DOES lacked written policies and procedures which led to inconsistencies in monitoring which makes it difficult to evaluate the effectiveness of the program in providing employment to District residents.
- DOES lacked written policies and procedures to enforce allowable penalties and *as of the date of our report had only issued one penalty in the history of the program.*
- First Source semiannual reports did not contain all information required by D.C. Law, could not be fully validated, and did not provide a comprehensive picture of hiring statistics.

We recommended in our audit:

- The creation of a committee that includes all contracting agencies to establish written policies and procedures to ensure that First Source Agreement is entered into before finalization of a contract award.
- The dissemination of Standard Operating Procedures (SOPs) for the Office of First Source Compliance complemented by training on the SOPs to ensure consistency in monitoring efforts.
- The development of standardized forms that capture all necessary beneficiary reporting requirements and the establishment of a process to reject report submissions that do not contain all necessary information.
- The establishment of a process to document when fines are waived and make this information accessible on DOES's website.
- A consideration to revising requirements in semiannual reports to require that they also include percentage hour achievements to accurately capture District resident hiring rates.

- The establishment of written policies and procedures, including retention of supporting documents, related to calculating the semiannual report results and presented to the D.C. Council to ensure that hiring statics can be fully supported.

As I stated earlier, in addition to our audit, we conducted a review to assess whether all the requirements of the First Source Law have been implemented and whether policies and procedures were in place to *effectively* implement all the requirements of the Law.

Our companion report, ***Less than One-Fifth of First Source Provisions Have Been Effectively Implemented and the District Has Not Demonstrated Success in Hiring and Retaining District Employees***, issued April 19, 2018, also compared the District’s First Source Program with best practices in other jurisdictions as well as employment projections and hiring statistics for the 27 projects or contracts included in our audit sample.

Overall, we found that despite being in effect for years, 39, or *81 percent, of the key requirements of the law were not being implemented or not being implemented effectively*. We attributed this to many reasons, including:

- A failure to implement many of the requirements of the Law in a timely manner.
- Failure of former DOES senior officials to effectively implement requirements of the law, at their own discretion, most specifically related to the assessment and issuance of allowable penalties.
- A lack of coordination among numerous District agencies to ensure effective implementation and ensure that all beneficiaries are monitored for compliance.
- A failure in the law to clearly delegate specific responsibilities to District agencies or to the beneficiaries receiving government assistance.
- A lack of sufficient resources to effectively monitor the program.

Examples of key requirements of the law that have not been implemented or not implemented effectively and cited in our report include:

- DOES is not able to determine that contractors are giving first preference to unemployed District residents because the source of job referrals has not been consistently reported.
- The requirement to have an employment agreement on file with all First Source contractors has not been consistently met.
- The law requires hiring compliance forms to be filed with DOES each month following the start of the contract or project. From the sample of 27 projects reviewed by ODCA, *not a single DOES-created monthly reporting form was submitted containing all 11 required reporting elements.*
- 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.
- 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 and we found this requirement was not met during the period of our review.

We further found that:

- The District has some of the most stringent first source or local job hiring law requirements and has failed to conduct regular reviews and assessments of hiring rates as is common in other jurisdictions despite a legal requirement to do so.
- Hiring statistics submitted by beneficiaries and reported by DOES are not effectively tracked or thoroughly verified and may not provide a valid presentation of the effectiveness of the First Source Program.

We were encouraged by DOES's response to the findings in our reports in that they concurred and indicated that certain actions were in progress to address deficiencies cited in our reports. Although DOES included in their written comments 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.

Of particular significance is the fact that DOES issued standard operating procedures for the Office of First Source Compliance on March 14, 2018 -- *the first SOPs since the inception of the program in 1984*. We reviewed these SOPS and found that *many of the procedures, if effectively implemented, will correct many of the monitoring and oversight deficiencies cited in our reports*. These SOPs covered critical monitoring areas including:

- Processes for obtaining and maintaining First Source Agreements.
- Obtaining and reviewing employment plans.
- Reviewing subcontractor lists of all contracts awarded on a project (company name, contract amount, estimated start date and end date).
- Performing desk reviews and site visits.
- Audits of employer records that may include certified payrolls, employee addressees, and type of labor provided by employees for hours worked percentages.
- Issuing compliance failure notices, compliance status updates, and closeout letters.
- Assessing employers' good faith efforts to hire District residents or meet hours worked percentage requirements.
- Processing fines or penalties.

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

That concludes my prepared testimony, Madam Chair, and I would be happy to answer any other questions.