DC Public Library
Administrative Manual Issuance System

DCPL ORDER NO. 407-02-12 Revised

SUBJECT: First Source Employment Compliance: Requirements, Policies and Procedures at DC Public Library

PURPOSE: The purpose of this administrative order is to institute the new requirements, policies and procedures, as set forth by D.C. ACT 19-244, Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, and to ensure the agency procurement, capital projects and facility management departments are working in concert with the DC Department of Employment Services [DOES]. The goal is to also ensure DC residents are given first preference in the recruiting and hiring of all new jobs at $300,000 or more, to certify that at least 51% of all new contractors, sub-contractors, apprentices and trainees who are hired for projects are District residents, and to establish new apprenticeship requirements for hiring DC residents.

1. Authority:

1.1 Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, (DC Act 19-244; 58 DCR), December 30, 2011

1.2 First Source Employment Agreement Act of June 29, 1984. (DC Law 5-93;DC Official Code § 2-219.01 et seq.), as amended
1.3 First Source Compliance Act of 2008 (DC Law 17-219; DC Official Code §2-219.31 et seq.), as amended

1.4 The Apprenticeship Requirements Amendment Act of 2004. (DC Official Code §2-219.03 and 32-1431 et seq.), as amended

1.5 Mayor’s Order 2011-47, February 23, 2011: Delegation of Additional Functions relating to First Source Employment Compliance to the Deputy Mayor for Planning and Economic Development

2. Applicability: This policy shall apply to all employees engaged in the procurement of goods and services at $300,000 or more for the DC Public Library, principally procurement, capital construction, facility management and business operations associated with compliance procedures.

3. Background:
All District government agencies are required to put into place monitoring and tracking processes for attaining compliance with existing First Source Agreement laws and practices. Both the District Mayor’s Office and District Council have traditionally, and at the present, focus wide attention on conformity with first source employment practices, ensuring that DC residents will be given first preference in securing District projects at $300,000 or more.

The FY2010 DC Auditor’s Report cited several lapses in oversight of First Source compliance. For this reason, the Office of the Deputy Mayor has been tasked to provide structure and new direction. Additionally, the District Council recently passed legislation: D.C. Act 19-244, District of Columbia Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011 to reinforce and strengthen the existing laws’ requirements, as well improve recordkeeping, controls and procedures.

4. Review and Summary:
Below is a capsule review of the basic requirements of the 1984 law v. the amended law of 2011, followed by a summary of the law’s amendments:
### FIRST SOURCE: 1984 LAW V. 2011 AMENDED LAW

<table>
<thead>
<tr>
<th>First Source Employment Agreement Act Of 1984</th>
<th>Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies to all contractors and sub-contractors</td>
<td>Applies to all contractors and sub-contractors</td>
</tr>
<tr>
<td><strong>$100,000 threshold</strong></td>
<td><strong>$300,000 threshold</strong></td>
</tr>
<tr>
<td>51% new hires to be DC residents</td>
<td>51% new hires to be DC residents</td>
</tr>
<tr>
<td>No Reference</td>
<td>20% journey workers as DC residents for contracts or projects at $5 million or more</td>
</tr>
<tr>
<td>51% employed as DC residents registered &amp; approved by DC Apprenticeship Council</td>
<td>60% apprentice workers as DC residents for contracts or projects at $5 million or more</td>
</tr>
<tr>
<td>No Reference</td>
<td>51% skilled laborers as DC residents for contracts or projects at $5 million or more</td>
</tr>
<tr>
<td>No Reference</td>
<td>70% common laborers as DC residents for contracts or projects at $5 million or more</td>
</tr>
<tr>
<td>No Reference</td>
<td>Collective bargaining agreements not a basis for waivers for contracts/ projects at $5 million or more</td>
</tr>
<tr>
<td>No Reference</td>
<td>Allowance granted to count hours that exceed previous requirements towards current requirements</td>
</tr>
<tr>
<td>No Reference</td>
<td>Non-construction projects will have FS requirements</td>
</tr>
<tr>
<td>No Reference</td>
<td>“Hard to Employ” inclusions that allow workers to double count hours</td>
</tr>
<tr>
<td>No Reference</td>
<td>7-Day Notice Requirement to DOES for all FS projects moving forward</td>
</tr>
<tr>
<td>General provisions existing</td>
<td>New requirements and rules, including employment plan submittal for bidders for contracts at $5 million or more</td>
</tr>
<tr>
<td>General provisions existing</td>
<td>New requirements and rules, including employment plan submittal to detail new hiring requirements</td>
</tr>
<tr>
<td>General provisions-- not strictly enforced</td>
<td>Stringent provisions for good faith effort waivers; additional fines and penalties for violations</td>
</tr>
<tr>
<td>No Reference</td>
<td>Debarment of companies who have been found in FS violation [2] times over a 10 year period</td>
</tr>
<tr>
<td>No Reference</td>
<td>Online public access to all FS forms and compliance requirements</td>
</tr>
<tr>
<td>No Reference</td>
<td>Workforce Intermediary Pilot Program</td>
</tr>
<tr>
<td>No Reference</td>
<td>Workforce Trust Fund</td>
</tr>
</tbody>
</table>
Highlights of District’s First Source Law

The District’s First Source law ensures that District residents are given priority for new jobs created by municipal financing and development programs. Effective February 24, 2012, the “Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011” significantly changes the District’s First Source law. The law continues to require 51% District resident new hires.

The First Source amendments over the years have expanded definitions to cover more projects, established minimum thresholds, and added specific job categories. The law was also amended to allow the Mayor to give exemptions to job categories if specific people in the DC labor force are not available (i.e., could create entry-level positions in lieu of more skilled ones to meet the requirements). The program has never had rulemaking, but rulemaking is planned for the new law.

- The 1983 Mayor’s Order 83-265 created the program, giving DC residents preference on contacts for entry-level jobs.

- In 1984, D.C. Law 5-93 creates current statutory framework for the program. It expands the definition of beneficiary to include all job categories and defined government-assisted project. This law is not always complimentary to the Mayor’s Order.

- In early 2000s, the law was amended to create the 51% hiring requirement and to expand enforcement to the current 5% direct and indirect costs.

- In 2005, the law exempted non-profit organizations.

- The Way to Work Amendment Act of 2006 expanded First Source beyond construction by expanding the definition of contracts, and it defined direct beneficiaries to include retail and commercial tenants. (This law also created the living wage for government contracts).

- In 2011, Mayor’s Order 2011-47 elevated First Source compliance to the Deputy Mayor for Planning & Economic Development (DMPED) and the new law took effect February 24, 2012.

(Law 5-93, 9-210, 14-24, 15-295, 16-118, 17-219, and 18-194)

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1 Document Origin: Department of Employment Services, March 2012

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Revision Issue Date: June 19, 2012
Highlights of District's First Source Law

Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011

General Changes:

• Requires 51% of all new hires on government contracts to be District residents

• Eliminates contracts under $300K from First Source obligations; establishes a $300,000 baseline for First Source agreements

• Requires that each government-assisted construction project receiving government assistance totaling $5 million or more must have the following percentage of DC residents on those projects:
  o 20% of journey worker hours; 60% of apprentice hours; 51% of skilled laborer hours; 70% of common laborer hours

• Retail and commercial tenants are subject to hiring requirements for 5 years following the commencement of the tenant’s initial lease date

• Contract end dates established when Certificate of Occupancy is issued

During Bidding:

• The initial employment plan outlines the bidder or offeror’s strategy to meet the local hiring requirements as part of its response to the solicitation. The evaluation is evaluated by the Mayor and shall be worth 10% of the overall score of the bid or proposal

Process:

• Allows DOES to consider altering the ratio of journey worker to apprentice positions based on a compelling District-resident hiring rationale

• 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.

• Provides on-line public access to executed First Source employment agreements, current compliance status of each project, and the contact information for the relevant compliance officer –within 120 days of effective date of act from 2009 through present
Highlights of District’s First Source Law

Reporting:

- New law gives contractors choice to report either by contractor or sub-contractors for construction projects only

- Allows beneficiaries to “double-count” hours worked by hard-to-employ District residents, up to 15%

- Adds additional monthly reporting requirements for contractors between $300,000 and $5M: must report on # of employees who worked on the project, # of current employees transferred, # of new job openings created, # of job openings created by employee attrition; # of job openings listed with the Department of Employment Services; total monthly direct and indirect labor costs associated with the project or contract, total # of all District residents hired for the reporting period and the cumulative total number of District residents hired; total # of all employees hired for the reporting period and the cumulative total number of employees hired, including each employee’s name, Social Security Number, job title, hire date, residence, and referral source for all new hires

- Contractors must submit certified payrolls as well as monthly and cumulative certified payrolls from all subcontractors at any tier working on the project or contract

- Requires specific documentation evidencing a good-faith effort to comply with First Source requirements prior to obtaining a waiver from a First Source agreement

Workforce Intermediary and Trust Fund:

- Establishes a workforce intermediary pilot program that shall act as an intermediary between employers and training providers to provide employers with qualified job applicants

- Establishes a workforce trust fund, administered by DMPED, in which contributions and monetary fines for breach of First Source employment agreements shall be deposited for the purpose of establishing and operating a DC Workforce Intermediary program

- Requires the Mayor to review and report to the Council the appropriateness of the hiring and reporting every three years

Fines and Penalties:

- 5% of direct and indirect labor costs (monetary fines) kept at the same level. However, fines now also include additional pro-rated fines for not reaching specific hiring requirements (1/8 of 1% of total amount)
Highlights of District’s First Source Law

- Allows debarment and deemed ineligible of consideration for government-assisted projects those who have been found in violation two times over a 10-year period for a period of 5 years

- Appeals are heard at Contract Appeals Board

Timeline for Rules for DC Act 19-244 “Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011”

<table>
<thead>
<tr>
<th></th>
<th>Construction</th>
<th>Non-Construction</th>
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</thead>
<tbody>
<tr>
<td>Under $300,000</td>
<td>Effective February 24, 2012</td>
<td>Effective February 24, 2012</td>
</tr>
<tr>
<td></td>
<td>Category eliminated from First Source Law</td>
<td>Category eliminated from First Source Law</td>
</tr>
<tr>
<td>Under $5 million</td>
<td>Effective February 24, 2012</td>
<td>Effective February 24, 2012</td>
</tr>
<tr>
<td>Over $5 million</td>
<td>Effective February 24, 2012</td>
<td>Needs additional rules within one-year of enactment in order for this category to be effective in the law that is effective February 24, 2012</td>
</tr>
<tr>
<td></td>
<td>No rules needed for this category to be effective in the law, but rules should be established for clarity of the law</td>
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</tbody>
</table>

5. **DCPL Compliance Analyst: Roles and Responsibilities**

The Library is proactively taking steps to reengineer its existing First Source process to ensure and confirm all requirements are consistently met. In place is a dedicated compliance analyst who is specifically responsible for monitoring and tracking conformity with First Source Employment Agreement [FSEA] workflow processes and documents, and has responsibility for:

- **5.1** Full completion of FSEA Agreements in Bid packages for transmittal to DOES;
- **5.2** Follow up and review of contractor monthly compliance reports;
5.3 Quarterly project re-verification of conformity at 51% hiring of DC residents through random audits of certified payroll review, along with recurrent visitations to project sites;

5.4 Development of internal controls to document monitoring activities and improve recordkeeping to collect information through implementation of an automated tracking system;

5.5 Attendance at all FSEA-related Pre-Bid and Post Award conferences;

5.6 Quarterly coordination with DOES Apprenticeship Council to monitor DCPL compliance with mandatory apprenticeship law;

5.7 Quarterly verification of Davis-Bacon Act records for compliance through random audits of certified payroll records, with notification/consultation to Contract Administrator and Procurement Officer for any discovered discrepancies or challenges—with follow up coordination through DOES to achieve resolution.

6. **DCPL Contracting and Procurement Department: Roles and Responsibilities**

The Contracting and Procurement Department (CPD) will actively work with the Compliance Analyst to ensure consistency and conformity in First Source recordkeeping, monitoring and tracking practices; to that end:

6.1 The CPD will consult with, share and exchange information at the initial and on-going phases regarding all potential business opportunities and/or contracts at $300,000 or more, including the amendments concerning those contracts at $5 million or more, for all Bids, RFPs, Pre-Bid and Post Award conferences, all Davis-Bacon records and all First Source Agreement packages for submittal to DOES;

6.2 The CPD is responsible for agency management regarding all Davis-Bacon Act requirements, as applicable;

6.3 The CPD will coordinate with DOES for any monetary fines and sanctions for FSEA violations, including failure to comply with the reporting requirements;

6.4 The CPD has the responsibility to ensure all FSEAs, as required, are submitted to DOES on a timely basis;
6.5 The CPD will coordinate with the Contract Administrator to ensure the Compliance Analyst is present at all Pre-Bid and Post Award Conferences, in order to communicate the Compliance unit’s expectations regarding FSEA and Davis-Bacon requirements for all prime and sub-contractors.

7. **DCPL Capital Construction Department: Roles and Responsibilities**
The Capital Construction Department (CCD) will actively work with the Compliance Analyst to ensure consistency and conformity in First Source recordkeeping, monitoring and tracking practices; to that end:

7.1 The CCD will consult with, share and exchange information at the initial and on-going phases regarding all potential business opportunities and/or contracts at $300,000 or more, including the amendments concerning those contracts at $5 million or more, for certified payroll records, monthly contractor compliance reports and any received Davis-Bacon reports, including discrepancies and/or challenges.

8. **DCPL Facility Management Department: Roles and Responsibilities**
The Facility Management Department (FMD) will actively work with the Compliance Analyst to ensure consistency and conformity in First Source recordkeeping, monitoring and tracking practices; to that end:

8.1 The FMD will consult with, share and exchange information at the initial and on-going phases regarding all potential business opportunities and/or contracts at $300,000 or more regarding construction or on-site installation projects, including certified payroll records, monthly contractor compliance reports and any received Davis-Bacon reports, including discrepancies and/or challenges.

9. **Enforcement:**
The Chief Business Officer oversees all agency responsibility for compliance with the procurement rules and procedures as outlined in this Order.

The DCPL Chief Business Officer and/or his designee is to ensure the effective internal controls are in place for all decisions and actions regarding compliance procedures among the procurement, capital construction, facility management and the First Source Compliance unit.
Effective Date: June 19, 2012 Revised

Distribution: All DCPL Staff

Approving Official Signatures:

[Signature]
Eric W. Coard
Chief Business Officer

Date: 6/18/12