December 9, 2015

Councilmember Stacy Head, At-Large
Councilmember Jason Williams, At-Large
Councilmember Susan Guidry, District A
Councilmember LaToya Cantrell, District B
Councilmember Nadine Ramsey, District C
Councilmember Jared Brossett, District D
Councilmember James Gray II, District E

1300 Perdido Street, 2nd Floor West
New Orleans, LA 70112

VIA EMAIL

RE: CRITICAL AMMENDMENTS TO THE CITY’S PROPOSED RULES FOR NEW ORLEANS’ LOCAL HIRING ORDINANCE

Dear Councilmembers,

We write to you with a request for your support in amending the City’s proposed Hire NOLA rules. We remain concerned that the rules as currently written fail to include language to hold contractors accountable for failing to comply with local hiring or first source hiring targets. Certain critical but smaller important changes can be made by amending the rules before the City Council vote on the rules on Thursday. We ask for your support in amending these rules before passing them tomorrow.

We have been working with the City for a year and a half in what we believed was a good faith effort to combat the New Orleans Black Jobs Crisis and truly make #BlackWorkersMatter in New Orleans. When the text of the ordinance itself on October 1st failed to articulate key elements of monitoring or enforcement that we felt were necessary to ensure the ordinance lived up to its intended purpose, we were assured that the rule promulgation process would be a real opportunity to make the ordinance work. As the local ordinance described, only 21 percent of total work hours on current City projects are performed by local workers. As you are also aware, the local jobs crisis reflects deep structural racial inequalities, as 52 percent of Black men are out of work in New Orleans. New Orleans’ local hiring ordinance is an important tool to advance the City’s workforce and economic development goals, by removing obstacles that have historically limited the full participation of local workers in the local economy. However, the effectiveness of the city’s local hire ordinance depends on the strength of the rules implementing the ordinance.
As currently written, the rules do not respond to the problems the ordinance purports to address. **First, the rules fail to include detailed and concrete enforcement language, and thereby fail to hold contractors accountable for local hiring and first source hire goals.** As written, the rules fail to set clear standards or consequences for non-compliance with local hiring targets and first source hiring requirements, leaving broad questions on interpretation of enforcement, and opening up enforcement to political whims. **Second, the First Source hire provisions do not create a workable First Source system and places unnecessary administrative burdens on Contractors.** As currently designed in the the rules, Contractors are simply provided access to a database of all workers registered with the City, rather than identifying workers responsive to the employer’s needs and helping set up interviews based on a defined standard, such as when the work registered with the First Source system. We saw such a system work well on the B.W. Cooper job site, and we believe that the City should play a job coordinator function. **Third, the lack of enforceable language requiring the use of apprenticeship programs to demonstrate good faith efforts fails to address fundamental barriers to local participation in the construction industry.** The standard for complying “in good faith” currently includes a statement on the use of apprentices at a ratio of 1 to 3 journeymen, which is important in ensuring that contractors train their workforce, but then appears to weaken the provision by adding the clause “if applicable and available.” Due to these failures, rule promulgation and thereby New Orleans’ local hire ordinance has not effectively address the unemployment crisis facing communities in New Orleans.

We agree that a finalized set of rules are urgently needed so that this city may begin to address the Black Jobs Crisis, but before the rules go into effect, we believe the City can, and must, do more. Stand with Dignity has spent countless hours over the last year and a half working with the administration to address the realities facing Black workers, as well as the City’s authority to address these challenges through local legislation within boundaries of state law.

**We write to you today with proposed changes to the rule language (attached in the appendix to this letter) that could be proposed as amendments on Thursday. These changes would help create stronger and clearer rules to support the implementation and monitoring of the local hiring ordinance. We also urge your continued support in pushing the Mayor’s office in the future to create enforceable compliance mechanisms for local hiring.**

We believe that the most important changes that City Council could immediately affect are:

(1) **In Section III:** Making the First Source Hire system effective and simple for Contractors to comply with.

- Instead of the City providing Contractors with all qualified applicants and requiring them to go through a list with many non-working numbers and set up interviews, the City will serve as a Job Coordinator and select qualified individuals based on a defined standard, such as when they signed up with the First Source system, and help contractors set up interviews with these individuals.
- The First Source Hire requirement should also include clearly defined and limited exemptions (for core employees and for internal promotions).
(2) **In Section IV:** Articulate stronger requirements for meeting good faith efforts standards, and promote training for local workers through the requirement of the use of apprentices as a method of demonstrating acting in good faith.

- The lack of training and career ladders in the construction industry provides a fundamental barrier to local participation in the industry. Good faith efforts must therefore require the use of apprenticeship programs. The clause “if applicable and available” makes this a suggestion as opposed to a requirement.

(3) **In Section V and VI:** Record-keeping must include detailed data in order for the City to receive full information on the level of compliance as the ordinance is implemented.

- Information should be collected from Contractors describing why individuals from the First Source hiring list were not hired.

(4) **In Section VII.** The Hire NOLA Committee’s role should be clearly articulated and defined so that all stakeholders can play a role in the monitoring and compliance of the ordinance.

(5) **In Section VIII.** More clearly defined compliance mechanisms should be articulated.

- Non-compliance notices should be sent out to Contractors immediately when a contractor hires an employee outside of the First Source Hire system so that contractors may come into compliance and avoid the consequences of repeated non-compliance.
- Records of non-compliance should be available to the public.
- Clear definitions of non-compliance are important so that the city can articulate its standard for material breach and subsequent termination of the contract, providing a consequence when Contractors fail to comply with the ordinance.
- Non-compliance consequences should be written in clear and mandatory terms, replacing *may* with *shall*.

With all the time and energy that the City Council and local advocates have put into bringing this local hiring ordinance to fruition, we hope our communities will see real change in the near future. Local workers in New Orleans have been excluded from decent jobs in the construction industry for too long, and too many opportunities have already been missed. Stand with Dignity believes strongly in the importance of a local hiring ordinance for the City of New Orleans, and we hope we can begin to see real change for our communities through this process. We are happy to provide more information on these matters, and can be reached through Colette Tippy at ctippy@nowcrj.org or 504-881-6550.

Sincerely,

Toya Lewis
Alfred Marshall
Colette Tippy
Organizers, Stand with Dignity

Sima Atri
Trudy Rebert
Legal Department, New Orleans Workers’ Center for Racial Justice
APPENDIX: STAND’S CRITICAL AMENDMENTS TO HIRE NOLA RULES

Office of Workforce Development

Proposed Regulations Governing Implementation of the Hire NOLA Ordinance With Respect to First Source, Participation Goals, and Continued Compliance

I. Authority.
Pursuant to Chapter 70, Article IV, Division 3 of the Code of the City of New Orleans, The Office of Workforce Development (OWD) shall promulgate rules and regulations to implement the provisions of said division, which established Hire NOLA, which links quality employment opportunities to local workers.

II. Applicability.
These regulations apply to “covered projects” as defined by Section 70-498 of the Code of the City of New Orleans.

III. First Source.
1. Any individual who is domiciled in the City of New Orleans and desires potential employment opportunities may submit to OWD information requested by OWD, which shall include, if applicable, but is not limited to their:
   i. Name,
   ii. Address,
   iii. Phone number,
   iv. E-mail,
   v. Skill-set or specialization,
   vi. Prior work history/experience,
   vii. References indicating positive prior work performance, and
   viii. Certifications.

   OWD shall maintain a First Source database whereby all such submitted information is stored.

2. OWD shall state on their website, and on any form provided to individuals seeking to be registered on OWD’s First Source database, that the provided information may be subject to public record.

3. Contractors on “covered projects” shall submit to OWD a Craft Employee Request Form for vacancies on said projects as provided herein.
IV. Local Participation Goals.

1. As provided in Sec. 70-499 of the Code of the City of New Orleans, Contractors and their Subcontractors, if applicable, shall commit to making Good Faith Efforts to achieve local participation goals.

2. Within three (3) working days of bid opening, the two (2) lowest Bidders for “covered project” contracts shall submit form OWD-GF, whereby a bidder commits to making Good Faith Efforts, attesting that if the contract is awarded, Contractor will:
   
   1. Utilize OWD’s Craft Employee Request Form to inform OWD of any vacancies on a “covered project.”
   2. Interview qualified individuals from the First Source database, as provided by OWD, for filling vacancies.
   3. Solicit in the official journal of the City, or any other local publication, and advertise as provided below, any potential vacancies for local workforce candidates if First Source individuals are ultimately not qualified or available.
   4. Advertise vacancies at local Union/Hiring Halls with registered apprenticeship programs, if applicable.
   5. Advertise vacancies at the job site.
   6. Conduct meeting(s) with potential managers and subcontractors to educate said individuals regarding the Local Hire goals provided herein.
   7. Utilize registered apprenticeship programs at a 1 apprentice to 3 journeyman ratio.

3. The advertisement referenced in subpart-2 shall include, but is not limited to:
   
   1. A description of position(s);
   2. The desired candidate qualifications;
   3. Wage rate;
   4. The application deadline.

4. OWD shall provide said Contractors a list of registered individuals on the First Source database that are qualified for employment to fill vacancies on “covered projects” within five (5) working day.

5. OWD shall determine the individuals on the First Source database that are qualified for employment to fill vacancies on “covered projects.”

6. Contractors’ shall only consider the OWD-provided qualified First Source individuals to fill vacancies on “covered projects” and wait five (5) working days before advertising the employment opportunity to the general public, as required by Sec. 70-500 of the Code of the City of New Orleans.

7. Qualified, as provided herein, shall mean individuals who possess a needed skill-set, specialization, or qualification that meets the requirements to fill a particular vacancy.
5. Notice that an applicant’s information may be subject to public record; and
6. Contractor contact information.

4. Within three (3) working days of bid opening, the two (2) lowest Bidders must submit a “Local-Hire Plan”, whereby the potential Contractor outlines how they will attempt to reach the goal(s) provided in Sec. 70-499 will continue to make efforts to maintain said goals, and submit supporting documentation indicating goal compliance.

5. Within three (3) working days of bid opening, the two (2) lowest Bidders must submit a “Manpower Utilization Schedule” that contains an approximation of needed craft and unskilled workers throughout the duration of the project.

6. Failure of a Bidder to submit the above documentation when required as part of an Invitation to Bid, Request for Proposals, or Request for Qualifications, may render the bid, proposal, or statement of qualifications non-responsive to that solicitation.

V. Records.

1. The Prime Contractor awarded the “covered project” contract shall submit to OWD, and ensure that all of their subcontractors submit, a Craft Employee Request Form for any vacancy on a “covered project”.

2. The Contractor awarded the “covered project” contract shall submit to OWD the following documentation within three (3) calendar days of interviews indicating Contractor’s attempted compliance with form OWD-GF and First Source hiring:
   i. The names of individuals hired from the First Source list, if any.
   ii. Brief description as to why any individuals referred and interviewed through the First Source program was not hired.

If vacancies on “covered projects” were not able to be filled by qualified First Source individuals, the Contractor must timely submit additional documentation to indicate Good Faith Efforts, which should include but is not limited to:

i. Copies of advertisements.
   ii. Photos and/or copies of advertisement(s) at Union/Hiring Hall(s) and at the job site.
   iii. Names and addresses of local individuals that responded to the advertisements.
   iv. Names of local individuals hired due to local advertising efforts.
   v. Utilization of apprenticeship programs at a ratio of 3 journeymen to 1 apprentice.
   vi. Documentation of any meetings with managers and subcontractors regarding the Hire NOLA rules and requirements.

3. The Contractor shall submit to OWD an attestation of the number and percentage of local workers on a “covered project,” and a workforce roster providing the names and address, positions, and self-identified race, gender, and ethnicity of the
individuals that may work on the “covered project”. The workforce roster shall be submitted within forty-five (45) calendar days of contract execution.

4. Contractors shall utilize OWDs Contract Compliance Monitoring System to maintain payroll records of all craft employees on “covered projects.”

VI. Continued Compliance.

1. Contractor shall inform OWD in writing within three (3) working days if a local worker hired pursuant to achieving local hire goals quits, is terminated, or otherwise ceases their involvement with the “covered project” for any reason.

2. Contractor shall make best efforts to hire a local worker for all open positions including those vacated by local workers, and work with OWD to utilize First Source individuals for replacement and recruitment for new employment opportunities throughout the life of the contract, if available.

3. Contractors shall submit monthly reports to OWD via the OWD’s Contract Compliance Monitoring System and shall utilize the OWD’s Contract Compliance Monitoring System to maintain payroll records of all craft employees on “covered projects. The data collected shall include, but is not limited to:
   i. The name and address of each worker who worked on the covered project;
   ii. The worker’s trade classification; a description of the work performed each day; the daily and weekly number of hours worked; and the self-identified race, gender, and ethnicity of each worker;
   iii. Whether or not the worker was a local resident or disadvantaged worker; and whether the worker is a non-Louisiana worker; and
   iv. The referral source through which the employer hired the worker.

VII. Periodic Review

1. OWD must conduct an annual periodic policy review to determine the appropriate participation goals as provided in Sec. 70-499 of the Code of the City of New Orleans. The OWD review shall:
   i. Consider whether there is a sufficient supply of qualified unemployed resident workers to meet the increased participation rates set forth in the ordinance;
   ii. Recommend steps the City can take to support apprenticeship utilization on city-funded construction projects to help build a qualified local workforce;
   iii. Make relevant findings in support of those determinations;
v. During the periodic review process, shall consult with relevant stakeholders including the community and the Hire NOLA Committee; and

2. OWD will work with the New Orleans Workforce Development Board, a federally created local Workforce Development Board in the State of Louisiana under the Workforce Innovation and Opportunity Act (WIOA) (as the same may be hereafter amended, the “Act”), to designate a committee called the “Hire NOLA Committee” that will assist OWD with monitoring and compliance, investigation of worker complaints, and the Periodic Review of the Hire NOLA Ordinance. The Hire NOLA Committee will be co-convened by three individuals representing contractors, unions, and the community.

VIII. Monitoring and Compliance

1. OWD has the authority to monitor “covered project” contracts to ensure continued compliance with First Source hiring requirements and the local participation goals and Good Faith Efforts provided herein, and may request additional documentation to evaluate as needed.
2. OWD may monitor a “covered project” by a variety of means, which may include but are not limited to:
   a. Job site visits,
   b. Review of data submitted via the Contract Compliance Monitoring System, including payroll tracking;
   c. Reviewing of records and reports;
   d. Receipt of complaints by workers themselves and/or
   e. Interviews of selected personnel.
3. **When a Contractor hires a worker without utilizing the First Source hiring process, OWD shall send the Contractor a notice of non-compliance immediately upon identifying a new hire that was not hired through the first source system.**
4. **When a Contractor fails to abide by its Manpower Utilization Plan, OWD shall contact the Contractor to offer assistance and ways to resolve the failure.**
5. **When the Contractor fails to comply in good faith with local participation goals at the end of contract period, OWD shall send the Contractor a notice of non-compliance.**
6. Records of non-compliance will be made publicly available on the OWD’s website.
7. If the Contractor continues to fail to comply or the Contractor repeatedly fails to comply, such continued and/or repeated non-compliance shall constitute a material breach, as provided in the contract, and result in termination of the contract.
8. Continued noncompliance shall be considered in future procurement and contract determinations.
IX. **Hiring Discretion.**

Nothing contained herein shall limit a Contractor or its subcontractors’ ability to assess qualifications of prospective candidates and to make final hiring and retention decisions. No provision of this Rule shall be interpreted as a requirement for Contractors or their subcontractors to employ any candidate not qualified for the position in question, or to employ any particular candidate.