

**Testimony on the
Executive Office of the Mayor FY22&23 Performance Oversight
Before the Committee on Executive Administration and Labor
February 10, 2023**

Good morning, Chairperson Bonds and members and staff of the Committee on Executive Administration and Labor. I am Melissa Millar, consultant to the Coalition for Nonprofit Equity, a coalition of approximately 1,000 DC nonprofits advocating for full funding and implementation of the Nonprofit Fair Compensation Act of 2020.

Contract Adjustments for Nonprofits

The law, effective since March 2021, seeks to ensure consistent application of overhead or indirect cost rates across all grants and contracts made by DC government agencies to nonprofits. It provides five ways for nonprofits to calculate and use their indirect cost rate in negotiations with the District on their grants and contracts. This fiscal year is the second of five years of a phased-in implementation period for the law, and attaches to all nonprofits' grants and contracts valued at up to \$5 million each (with the exception of hospitals, universities, and foundations). This law is an important step in right-sizing and adequately compensating nonprofit partners for their "actual costs" of doing business in and with the District, and elevating nonprofits' financial well-being.

The passage and implementation of this law is an equity issue. Nonprofits diligently serve District residents, often literally at their own expense. At just one of the 1,000 nonprofits advocating with the Coalition for Nonprofit Equity, the gap in indirect costs on District grants and contracts was over \$400,000. This gap in government funding must be raised from other sources just to continue providing the government's services and programs; the time for nonprofits to *stop* subsidizing the government's work is now.

We are spot-checking FY23 solicitations for inclusion of the law and standard language about indirect cost rates. Implementation of this legislation remains problematic, as we have found few examples which correctly included all the ways a nonprofit could effectuate a rate pursuant to the law and named the Act, or worse, solicitations that included specific language seeking to limit indirect costs to, for example, a *de minimis* 10% only.

The Coalition has been meeting and working with staff with the Executive Office of the Mayor (as well as the City Administrator's Office, the Office of Racial Equity, the Mayor's Office of Community Affairs, and the Office of Contracting and Procurement) on successful implementation of the law. This includes pushing the Executive to complete the cost study, funded by a \$200,000 line item in the FY21 Budget Support Act of 2020, to assess overall implementation costs *as well as* the extent to which District government has retained indirect costs on federal pass-through funds from implementing nonprofits, contrary to 2014 federal

Office of Management and Budget (OMB) guidance. OCP did not complete the study in FY21, and the Executive committed to the Coalition in spring/summer 2022 that it would conduct a cost study, first that summer, then in the fall, and most recently, the Coalition learned in December 2022 DC government planned to assess costs in January 2023, months after the FY24 budgeting process began.

The Coalition also received promises related to development and distribution of standardized language related to the law being shared with all grants and contract personnel for inclusion into all relevant solicitations. As I noted, this standard language either has *not* been developed and distributed, or agencies and offices are not universally and uniformly using this language.

The solicitation language issue is an extension of larger concerns the Coalition has with respect to personnel training. While EOM communications shared that the Office of Contracting and Procurement had trained contracts personnel and provided a module for the procurement institute, coalition nonprofits report working with agency contract administrators who still purport to be unfamiliar with the law, which may ultimately delay negotiating, payments, and launching of programs. On the grants side, we are even *less* sure about the extent to which grants personnel have been trained on the Act, as our conversations with EOM noted grants training would come after contracts personnel training.

We also note that in our spring/summer conversations with EOM, there was initial planning to hold listening sessions with nonprofits for the government to hear and understand their experiences and concerns; the Coalition offered to assist with recruitment/advertising and we collectively were scheduling for sessions in mid-September. However, these sessions have not been held.

We greatly appreciate the time and effort already invested by EOM on the law, but we need additional time and money dedicated to this effort. In FY24, the law's phase-in increases to cover grants and contracts valued at up to \$10 million; for a nonprofit with a federally negotiated indirect cost rate (NICRA) of approximately 14% (very typical), were they to receive a \$10 million grant or contract, the law *requires* an additional \$1.4 million be budgeted for that grant or contract to support the nonprofit's indirect costs. It is *imperative* that the EOM continue to assess the costs of successful and full implementation and budget across the government accordingly, while continuing to provide training to *all* grants and contracts personnel, agency and office directors, and legal staff. Further, holding listening sessions with nonprofits or attending Coalition-sponsored events to understand nonprofit experiences should greatly clarify how this law should work and how it is currently being experienced in effect.

Thanks for the opportunity to testify and I am happy to answer any questions.

Addendum: Examples of Implementation

Solicitations and Inclusion/Non-Inclusion of Standard Language on Act

The Coalition for Nonprofit Equity examined a sample of solicitations released by District Agencies in FY23 (i.e. from October-December 2022) that met the criteria for year two implementation of the Act. It is clear from the variety of language used in the solicitations that if standard contract and/or grant solicitation language has been generated, it has not been taken up across offices and agencies and is not being faithfully executed by all grantmaking and contract and procurement personnel.

1. Grants

Of the nine grant examples collected, three are DC Health grants, and each grant not only **fails** to mention the Act, but **also** caps indirect costs at 10%.

- [Healthy Steps RFA_FINAL2_0.pdf \(dc.gov\)](#)
- [SyndemicRFA_FINAL.pdf \(dc.gov\)](#)
- [Local HV and Place Based RFA FY23_FINAL.pdf \(dc.gov\)](#)

A grant to promote DC voting rights for the Office of the Secretary and an employer partnership grant between DME and WIC **both fail** to mention to Act or anything about indirect costs *at all*.

- [FY23 RFA - Grant to Promote District of Columbia Voting Rights Statehood.pdf \(dc.gov\)](#)
- [2023 Employer Partnership Grant RFA_FINAL_Update_12.2.22_0.pdf \(dc.gov\)](#)

The Coalition notes two grants from OSSE that mentions the Act and two of the ways to address an indirect cost rate – a NICRA (if the organization has one) or taking a *de minimis* rate; however, the solicitation doesn't fully address all the ways the Act allows development of a rate.

- [2023 Summer Strong DC RFA.Final .pdf](#)
- [Summer Strong SNP 2023 RFA.Final .pdf \(dc.gov\)](#)

The review notes that a grant from the Office of Victims Services and Justice Grants and a grant from the Department of Behavioral Health (DBH) mention the Act and the various ways to calculate the rate, although we do also note the non-standard ways these two solicitations go about communicating this information.

- [Final_RFA_FY2023_JG_Supplemental_ARPA_and_PSN.pdf \(dc.gov\)](#)
- [RFA DCRR082622 Recovery Residences.pdf](#)

2. Contracts

We reviewed seven examples of recent contract solicitations for FY23. We note that three distinct solicitations from CFSA each **failed** to include language about the Nonprofit Fair Compensation Act of 2020, with two of those specifically including language noting, “The contractor shall not mark-up the cost reimbursement allowable expenses on this contract with indirect cost, overhead, general, and administrative cost.”

- Foster Home and Adoption Services. DoC633559, DCRL-2023-H-0002.
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc633559&hash=371qsabht72xg68n>
- Congregate Care – Therapeutic Group Home Services. DoC61396, DCRL-2022-H-0110.
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc613969&hash=371qsabht72xg68n>
- Emergency Short-Term Child Care Services. Doc636714, DCRL-2023-H-0016.
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc636714&hash=371qsabht72xg68n>

Three additional solicitations failed to mention the Nonprofit Fair Compensation Act, and two of those linked to a July 2010 “Standard Contract Provisions of the District of Columbia” document in the Ariba system as part of their solicitation documents. The July 2010 document could in no way include *any* information about the Act, as it was only effective from March 2021; this document should be updated to include all recent and relevant contracting-related DC Code updates.

- Independent Verification and Validation of MMIS (DHCF). DoC609502.
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc609502&hash=371qsabht72xg68n>
- FY23 – DHCD – Due diligence, litigation support, and settlement services. DoC638703.
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc638703&hash=371qsabht72xg68n>
- FY23-SR0- DC Earned Income Tax Credit Program Administration (DISB). DoC638877.
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc638877&hash=371qsabht72xg68n>

Finally, as with the grant review above, we found a contract solicitation for DBH for nurse staffing that included reference to the Act and the ways to calculate and use the rate.

- FY2023 – DBH Nurse Temporary Staffing & Nursing Services (V2). DoC638527. IFB - DBH - FY2023 Nurses & Nursing Support Staffing (REV006).
 - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc638527&hash=371qsabht72xg68n>