U.S. Department of Labor

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REPORT TO THE WAGE AND HOUR DIVISION

BETTER STRATEGIES ARE NEEDED TO IMPROVE THE TIMELINESS AND ACCURACY OF DAVIS-BACON ACT PREVAILING WAGE RATES

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BRIEFLY...

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March 29, 2019

WHY OIG CONDUCTED THE AUDIT

For more than 20 years, Congress, the Office of Management and Budget (OMB), DOL Office of Inspector General (OIG), and Government Accountability Office (GAO) have raised concerns about the timeliness and accuracy of prevailing wage rates mandated by the Davis-Bacon Act (DBA) and published by DOL's Wage and Hour Division (WHD). Construction workers completing contracts financed wholly or in part with federal funds must be paid no less than the minimum wage rates WHD determines to prevail in the area where the work is performed.

In 2003, OMB concluded that the voluntary nature of wage surveys may have introduced reporting bias that could undermine the accuracy of wage rates. In 2004, the DOL OIG reported that inaccurate survey data, potential bias, and untimely wage decisions were continuing concerns. In 2011, GAO reported the need for transparency in the calculation of wage rates.

WHAT OIG DID

We conducted an audit to determine whether WHD timely and accurately determined prevailing wage rates needed for DBA-covered federal and federally-funded construction.

We interviewed WHD officials, analyzed wage rate age data, and evaluated a sample of 10 surveys conducted by 4 of WHD's 5 regional offices during FYs 2013-2017.

READ THE FULL REPORT

http://www.oig.dol.gov/public/reports/oa/2019/04-19-001-15-001.pdf

WHAT OIG FOUND

WHD needs better strategies to improve the timeliness and accuracy of prevailing wage rates needed for DBA-covered federal and federally-funded construction. We based this conclusion on the results below.

In 2016, WHD reported to Congress that the time to complete wage surveys had decreased from an average of 5–7 years in 2002 to 2.4 years in 2015. This is consistent with our analysis that shows WHD took an average of 2.6 years to complete 9 of the 10 surveys we sampled (1 survey was cancelled). However, improvements are still needed to ensure wage determinations are updated in the shortest amount of time. More importantly, WHD needs to ensure contract awards do not include outdated wage determinations that contain prevailing wage rates. To illustrate this point, as of September 2018, 3 percent of WHD's 134,738 unique published rates had not been updated in 21 to 40 years, raising questions about the reliability and usefulness of these rates in assisting contractors to develop bids and consider workers' pay. In one instance, a federal agency's solicitation for bids in May 2017 contained wage rates last updated in 1988.

WHD continued to face challenges in securing sufficient wage data from the local areas that prevailing wages represented. For 7 sampled surveys, the calculation of prevailing wages published for 31 counties did not include a single worker paid in those counties. In addition, for 6 of these surveys WHD was unable to conduct onsite visits to verify the accuracy of wage data used to calculate prevailing wages for 41 percent of contractors selected because they declined to participate.

These issues occurred, in part, because WHD had not developed alternative methods to update wage rates and garner support from employers to ensure prevailing rates were current and accurate. As a result, published wage determinations were not sufficient to implement the program as intended and construction workers were at increased risk of being paid less than the prevailing rate.

WHAT OIG RECOMMENDED

We made 8 recommendations to improve the overall quality and accuracy of DBA prevailing wage rates.

WHD agreed with our recommendations.

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INSPECTOR GENERAL'S REPORT

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This report presents the results of our audit of the Wage and Hour Division's (WHD) determination of prevailing wage rates under the Davis-Bacon Act.

Construction workers completing contracts financed wholly or in part with federal funds must be paid no less than the minimum wage rates WHD determines to prevail in the locality where the work is performed. For more than 20 years, Congress, the Office of Management and Budget (OMB), DOL's Office of Inspector General (OIG), and the Government Accountability Office (GAO) have raised concerns about the timeliness and accuracy of these rates. In 2003, OMB reported the voluntary nature of wage surveys may have introduced reporting bias that could undermine the accuracy of wage rates. In 2004, DOL OIG reported that inaccurate survey data, potential bias, and untimely wage decisions, were continuing concerns. In 2011, GAO reported the need for transparency in the calculation of wage rates.

We conducted an audit to determine whether WHD timely and accurately determined prevailing wage rates needed for federal and federally-funded construction.

To address this objective, we reviewed federal laws and regulations related to WHD's procedures for determining DBA prevailing wage rates and interviewed WHD management and staff. To evaluate the timeliness and accuracy of wage rates, we examined documentation that supported 10 surveys (9 published and 1 cancelled) conducted by 4 of WHD's 5 regional offices during FYs 2013-2017. We also analyzed wage age data from WHD's Wage Determinations Generation System.

BACKGROUND

The Davis Bacon Act (DBA) of 1931 gave the Secretary of Labor authority to determine prevailing wages. Under the DBA, employers on federal construction contracts over $2,000 are required to pay laborers and mechanics no less than the wages and fringe benefits prevailing for the same job classifications in the civil sub-division of the state in which the contract is performed. WHD's implementing regulations[1] designated the county as the civil sub-division, and defined prevailing wage as the wage paid to the majority (more than 50 percent) of workers in the job classification on similar projects in the area.[2] When there is no majority, the prevailing wage is the average of wages paid. Wage determinations containing prevailing wage rates are published in general wage determinations[3] at Wage Determinations Online (WDOL.gov).

To update existing wage determinations, WHD conducts surveys to collect and compile data about hourly rates and fringe benefits paid to workers performing on four types of construction projects: building, heavy, highway, and residential. The DBA requires contracting officers to include the appropriate wage determination in bid solicitations and contract awards for covered construction projects, including projects financed in part with federal funds. During FYs 2014 – 2017, more than 70 federal agencies spent over $169 billion on covered construction projects.

[1] 29 CFR, Part 1.7, Procedures for Predetermination of Wage Rates.

[2] Regulations permit the use of wages paid on similar construction in surrounding counties when insufficient construction occurred within the area [county], provided that data in metropolitan counties is not used as a source of data for rural counties and vice versa.

[3] WHD also issued project wage determinations at the request of a contracting agency. These wage determinations (31 issued during FY 2016) expired 6 months from the date of issuance unless they were used, in which case they were in effect until the project was completed.

RESULTS

WHD needs better strategies to improve the timeliness and accuracy of prevailing wage rates needed for DBA-covered federal and federally-funded construction. We based this conclusion on the results below.

In 2016, WHD reported to Congress that the time to complete wage surveys had decreased from an average of 5–7 years in 2002 to 2.4 years in 2015. This is consistent with our analysis that shows WHD took an average of 2.6 years to complete 9 of the 10 surveys we sampled (1 survey was cancelled). However, improvements are still needed to ensure wage determinations are updated in the shortest amount of time. More importantly, WHD needs to ensure contract awards do not include outdated wage determinations that contain prevailing wage rates. To illustrate this point, as of September 2018, 3 percent of WHD's 134,738 unique published rates had not been updated in 21 to 40 years, raising questions about the reliability and usefulness of these rates in assisting contractors to develop bids and consider workers' pay. In one instance, a federal agency's solicitation for bids in May 2017 contained wage rates last updated in 1988.

WHD continued to face challenges in securing sufficient wage data from the local areas that prevailing wages represented. For 7 sampled surveys, the calculation of prevailing wages published for 31 counties did not include a single worker paid in those counties. In addition, for 6 of these surveys WHD was unable to conduct onsite visits to verify the accuracy of wage data used to calculate prevailing wages for 41 percent of contractors selected because they declined to participate.

These issues occurred, in part, because WHD had not developed alternative methods to update wage rates and garner support from employers to ensure prevailing rates were current and accurate. As a result, published wage determinations were not sufficient to implement the program as intended and construction workers were at increased risk of being paid less than the prevailing rate.

TIMELY UPDATES TO PUBLISHED WAGE RATES ARE NEEDED TO INCREASE THEIR RELIABILITY AND USEFULNESS

Standards for Internal Control in the Federal Government[4] require federal agencies to use quality information to achieve objectives. GAO defines quality information (in part) as information that is current, accurate, and provided timely. Relative to DBA prevailing wage rates, DOL's Strategic Plan for FYs 2014-2018 supported this requirement, as it stated:

> Workers benefit only if the wages issued by the Department are accurate, up-to-date, and truly reflective of what is prevailing in the locality.

REPORTED IMPROVEMENTS IN THE TIME IT TAKES TO COMPLETE WAGE SURVEYS

In 2016, WHD reported to Congressional Appropriations committees that it had reduced the amount of time it took to conduct surveys from start to publication from 5 to 7 years in FY 2002, to an average of 2.4 years. Our analysis of 10 sampled surveys initiated during FYs 2013-2015 supported that this reduction had occurred. For 9 of 10 sampled surveys (1 was cancelled), WHD took an average of 2.6 years to complete a survey. However, survey completion time needs to further improve so that WHD can provide current wage determinations when covered construction is planned to start in 2 years or less. See Exhibit 1 for a list of sampled surveys and Exhibit 2 for the 57 wage surveys WHD initiated during FYs 2013-2017, including applicable publication dates.

During our audit, WHD officials stated that in 2015 they conducted a top-to-bottom evaluation of the DBA wage determination process to identify improvements that could be made. As a result, WHD developed a new measure for the timeliness of wage surveys, 21 months (1.75 years) from initiation to submission for publication. Officials further stated that they began using the 21-month timeframe in FY 2016, and anticipate that the new measure will be achieved for all future DBA prevailing wage surveys. Officials also stated that prior to this analysis, they did not hold the completion of DBA wage surveys to a particular timeliness standard. See Exhibit 3 for a flowchart of WHD's 21-month survey process.

[4] GAO-14-704G, *Standards for Internal Control in the Federal Government,* September 2014.

PUBLISHED WAGE RATES WERE AS MANY AS 40 YEARS OLD

While WHD had reduced the average time it took to complete wage surveys started between 2002 and 2015, it was still challenged with updating wage rates prior to the start of agencies' bid and solicitation processes. To illustrate this point, we analyzed wage rate age data from WHD's Wage Determinations Generation System and determined that 3 percent of the 134,738[5] wage rates published in wage determinations as of September 2018, were 21 to 40 years old. The majority of these wage rates were nonunion (Table 1) and had not been updated since between 1978 and 1997.

TABLE 1: AGING SCHEDULE WAGE RATES AS OF SEPTEMBER 30, 2018

Age Ranges	Total Number of Unique Classifications/Wage Rates		
	Union	Nonunion	Total
36 to 40 Years Old	0	749	749
31 to 35 Years Old	0	757	757
26 to 30 Years Old	0	1,905	1,905
21 to 25 Years Old	32	942	974
SUBTOTAL	**32 (0.05%)**	**4,353 (6%)**	**4,385 (3%)**
16 to 20 Years Old	32	669	701
11 to 15 Years Old	330	2,168	2,498
6 to 10 Years Old	1,510	30,438	31,948
5 Years and Under	62,946	32,260	95,206
TOTAL	**64,850 (48%)**	**69,888 (52%)**	**134,738 (100%)**

Source: WHD's Wage Determination Generation System

We examined federal procurement data and identified instances in which these outdated nonunion rates were provided to contractors for the purpose of developing bids for covered contracts. For example, data we obtained from FedBizOpps[6] showed that during FY 2013, one federal agency's solicitation for a $140 million contract (with 4 option years) in Texas included a wage determination with nonunion wage rates last updated in 1988. In addition, during

[5] One unique job classification/wage rate could prevail in multiple counties. As such, the number of wage rates non-uniquely represented in WHD's Wage Determinations Generation System, and published in wage determinations is significantly higher.

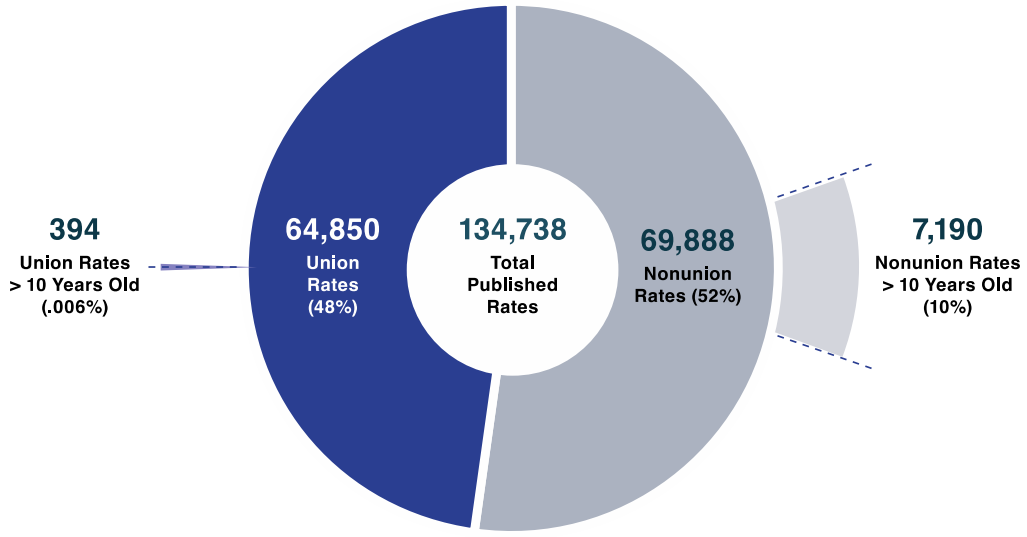
[6] Short for Federal Business Opportunities, the website, FBO.gov, is where contracting officers post presolicitations, solicitations, and contract awards valued over $25,000.

FY 2017, another federal agency's solicitation for a contract valued at $100,000 to $250,000 in New York included a wage determination with nonunion wage rates last updated in 1988 as well. Furthermore, grantee expenditure reports we obtained from the website of one federal agency showed that during 2014-2017, Puerto Rico spent $38.2 million to complete covered construction when wage determinations in effect at the time contained wage rates last updated in 1995 (these rates remained unchanged as of December 2018).

UNION WAGE RATES WERE MORE CURRENT THAN NONUNION

Union wages prevailed for 48 percent of the 134,738 rates in WHD's Wage Determinations Generation System. In addition, less than 1 percent of these rates were over 10 years old, compared to 10 percent of nonunion rates (Figure 1).

FIGURE 1: PUBLISHED PREVAILING WAGE RATES



Source: WHD's Wage Determination Generation System

WHD generally updated union rates when labor unions renegotiated collective bargaining agreements. However, WHD had to conduct new surveys to update nonunion rates. New surveys could cause existing nonunion wage rates to be updated or dropped from the resulting wage determination. New surveys could also determine that union rates no longer prevail. See Exhibit 4 for a diagram of the process for publishing new wage determinations with up-to-date prevailing wage rates.

ALTERNATIVE METHODS WERE NEEDED TO IMPROVE SURVEY TIME AND ENSURE WAGE DETERMINATIONS DID NOT CONTAIN OUTDATED WAGE RATES

WHD collected wage data on its Form WD-10, Report of Construction Contractor's Wage Rates and had not established a more efficient method to review the data collected. For our 10 sampled surveys, contractors, unions, agencies, associations, and other data providers, submitted 38,225 WD-10 reports that WHD reviewed and clarified for usability through follow-up phone calls. Instead of performing 100 percent manual reviews, WHD could have considered other strategies, such as statistical sampling or a risk-based approach that stratified WD-10s as high-medium-low risk based on past performance or other indicators that a more intense review was warranted to further improve on survey timeliness. WHD officials stated that they questioned whether statistical sampling would be appropriate and whether it would be more efficient or effective than their current processes. Officials further stated that the use of statistical sampling in lieu of comprehensive clarification would likely result in the publication of fewer, and less robust, wage determinations. We believe that WHD should leverage the extensive statistical sampling knowledge-base and experience within DOL's Bureau of Labor of Statistics (BLS) to discuss the pros and cons of statistical sampling.

In addition, WHD could have used rate escalators like the Consumer Price Index (CPI) produced by BLS to bring nonunion wage rates current. According to BLS, labor unions used the CPI to escalate wage rates in collective bargaining agreements. WHD officials expressed concerns about the extent to which the CPI represented metropolitan versus rural counties. However, we believe WHD should discuss with BLS whether this is a point of contention that could be overcome. Also, we as well as GAO have expressed in prior audit reports[7] that WHD should consider using BLS's Occupational Employment Survey data to develop DBA prevailing wage determinations. WHD used this BLS data to determine prevailing wage rates for its Service Contract Act program. In 2014, WHD reported to GAO that it met with BLS to explore use of the Occupational Employment Survey data and cited the following barriers to using the data including:

[7] DOL OIG Report Number 04-04-003-04-420, Concerns Persist With the Integrity of Davis-Bacon Act Prevailing Wage Determinations, March 30, 2004, GAO11-152, Methodological Changes Needed to Improve Wage Surveys, March 2011.

- DBA and implementing regulations required use of the smallest civil subdivision, whereas Occupational Employment Survey data was primarily derived using statewide data;

- Regulations required the use of a prevailing rate requirement at more than 50 percent (rate paid to a majority of workers) as opposed to the Occupational Employment Survey' automatic calculation of an average rate; and

- Certain data collected by BLS in its surveys was not permitted (by WHD's policy and procedures) to be included in prevailing wage calculations (for example, the Occupational Employment Survey included data on "helpers").

During our audit, WHD maintained its position on the use of Occupational Employment Survey data. However, Congress did not specify in the DBA how prevailing wages should be calculated. Instead, it left this critical component up to the Secretary of the Department of Labor. We continue to believe WHD should consider using the Occupational Employment Survey data for more timely and up-to-date prevailing wage rates in those situations where they will not otherwise have adequate wage data.

ALTERNATIVE METHODS COULD HAVE FACILITATED UPDATES TO RATES WHEN TWO REQUESTED SURVEYS WERE CANCELLED

WHD's survey guidance required the collection of enough data (in WD-10 submissions) to publish wage rates for half the key job classifications in the construction type. Building construction consisted of 16 key job classifications, heavy and highway shared 8, and residential had 12 (Exhibit 5). In addition, to calculate a wage rate for each job classification, data about wages paid to a minimum of 6 workers employed by 3 contractors was required. WHD cancelled its Kansas and Alaska Residential surveys when the amounts of data collected indicated it would not be able to meet these data sufficiency requirements. State officials requested the surveys in order to update wage rates that had last been published in April 1999 (Kansas) and April 1996 (Alaska). WHD started the Kansas survey in August 2015, and mailed 6,271 requests for wage data. After receiving only 542 WD-10s, WHD cancelled the survey in March 2016. WHD started the Alaska survey in September 2016, and mailed 796 requests for wage data. After receiving only 68 WD-10s, WHD cancelled the survey in May 2017. As a result, the previously published wage rates remained unchanged and had not been updated as of December 2018.

The Alaska state official who requested residential wage rates be updated, expressed in a letter to WHD in January 2014, that construction contractors were at increased risk of unfair competitive advantage and stated:

> When wage determinations are not updated on a regular basis, this creates problems where reputable contractors who pay market prevailing wages are underbid by contractors using wages set below market wage rates. This type of competition is not healthy for Alaska's contractors or their workforces.

Alternative methods may have helped WHD bring nonunion prevailing wage rates current, as state officials requested. From one survey to the next, union rates were updated using renegotiated collective bargaining agreements. WHD stated that the use of any methods other than those specified in its regulations would require a regulatory change.

WHD'S RATIONALE FOR NOT UPDATING SOME RATES INCLUDED INEFFICIENT USE OF RESOURCES

WHD maintained that updating some rates would have been highly inefficient. To illustrate, WHD provided this scenario; conducting a survey to update one or two nonunion rates when the wage determination contained union rates in a heavily unionized area would have been a poor allocation of resources. We found an example of such inefficiency in 1 sampled survey, Minnesota Building. This survey was initiated in May 2015, and WHD ended up spending an estimated $1.3 million to replace a wage determination where only 18 percent of the 2,004 rates it contained were nonunion. After more than 3 years (in June 2018), with 82 percent of union wage rates generally current, new nonunion rates were published. WHD should have considered alternative methods to determine if union rates continued to prevail, and to update nonunion rates that required updating. For instance, after abandoning mini-surveys that were used to determine the need for comprehensive surveys, WHD officials said they should have considered replacing mini-surveys with a new method for determining the extent that workers in a state remained covered by collective bargaining agreements, which was an indicator that union wage rates persisted. This may have reduced the time and cost incurred to conduct the Minnesota Building survey. WHD will likely face more situations like this in the future given that as of September 2018, union wages prevailed for nearly 50 percent of its published rates.

WHD also stated that updating some rates would be of limited value and offered the following scenario as an example: an older rate was on a rarely used wage determination or in a rural county with very little federal or federally-funded construction. We maintain that an alternative method to update wage rates could increase the likelihood of WHD being able to bring current, those rates that agencies need for their bid and solicitation processes and contractors need to develop bids and determine labor costs.

REGULATORY CHANGES MAY BE NEEDED

Regulations implementing the DBA provided various sources of wage data that WHD could use to determine the prevailing wage rates published in new wage determinations. However, the regulations were silent concerning the use of alternative methods to update those rates without conducting a new survey (except for highway rates). For highway construction, regulations required that WHD consult with states in which highway projects would be performed under Federal-Aid and give due regard to states' information before determining wage rates for applicable projects. Therefore, instead of conducting wage surveys for highway construction, WHD adopted applicable states' prevailing wage rates. As of January 2019, 26 states (plus the District of Columbia) had state prevailing wage laws.[8] WHD used the surveys conducted by 15 states to publish 25 highway wage surveys during FYs 2013 – 2017.

WHD regulations permitted the consideration of prevailing wage rates determined by state and local officials.[9] Although WHD used applicable states' wage rates for highway construction, WHD officials stated they could not adopt states' rates for other construction types. Officials further stated that this was based on a DOL Administrative Review Board decision[10] that rates in collective bargaining agreements could only be adopted when actual wage data collected under the survey process reflected that those rates actually prevailed. Our review of wage determinations that contained outdated nonunion rates showed that WHD updated union rates (on those wage determinations) using renegotiated collective bargaining agreements (for decades) without conducting new surveys, making the adoption of those rates a moot point. This explains why the percentage of union rates over 10 years old was less than 1 percent compared to 10 percent for nonunion rates. We do not believe that the reason WHD provided for not using states' prevailing wage rates for other construction types was valid,

[8] WHD conducted highway surveys in states that had no prevailing wage laws. Georgia Highway, one sample survey was an example.

[9] 29 CFR Section 1.3(b) (3).

[10] Mistick, ARB Case No. 04-051, 2006.

because states conducted wage surveys (similar to WHD's) to determine prevailing wages.[11] For this reason, WHD should determine whether it would be statutorily permissible and programmatically appropriate to adopt state or local wage rates other than those for highway construction.

WHD officials stated that a regulatory change would be required in order to use alternative methods such as the CPI, Occupational Employment Survey, and states' non-highway data to update wage rates. Nevertheless, OMB required agency managers to continuously monitor and improve the effectiveness of internal controls associated with their programs.[12] Accordingly, we believe WHD should take the actions necessary to identify, consider, and implement alternative methods (including collaborating with other DOL agencies such as BLS, as well as state agencies) to ensure relevant prevailing wage rates (those needed to complete covered construction) are current. For less relevant outdated rates, WHD needs a strategy to handle the data to minimize negative perceptions that could result when the information is viewed by the public at WDOL.gov.

CONTRACTORS' LACK OF PARTICIPATION IN WAGE SURVEYS REMAINED A CHALLENGE TO WHD'S ABILITY TO PUBLISH ACCURATE PREVAILING WAGES

WHD published wage rates on a county basis and made them searchable by county at WDOL.gov. Prior to publication, WHD calculated rates using its Automated Survey Data System. All the documentation from WD-10s that supported the rate calculation for a particular job classification was captured in what WHD termed a craft (job classification) report.

NOT A SINGLE WORKER USED TO CALCULATE RATES PUBLISHED FOR 31 COUNTIES WERE PAID IN THE COUNTIES

For 7 sampled surveys in the states of Arkansas, Kansas, and Nevada, we analyzed craft reports for 124 wage rates published during FYs 2016-2017. Our analysis showed that for 48 percent of the rates we tested, WHD was not able to collect wage data about a single construction worker within the 31 counties that the published rates represented. Instead, WHD used wages paid in 1 to 6 other

[11] We identified at least 12 states that conducted wage surveys to determine prevailing wages.

[12] OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control, July 15, 2016.

counties in order to meet the minimum requirement (6 workers paid by 3 contractors). While this practice may have been acceptable under WHD's regulations, it illustrates the challenge WHD had in collecting and using wage data from particular counties to calculate wage rates published for those counties.

PREVAILING WAGES CALCULATED USING 3 WORKERS AND 2 CONTRACTORS

In June 2012, WHD adopted the 6/3 Standard in response to the Administrative Review Board's[13] call for a broader set of data (especially for key job classifications – see Exhibit 5 – in metropolitan areas). At the same time, WHD revised its survey guidance to state that it would only use 3 workers employed by 2 contractors (the 3/2 Standard) in narrow circumstances when it determined prior to beginning a survey that the sample size of contracts and workers was so small that using the lower standard was necessary. However, WHD stated that it had not defined the specific criteria that must be considered in order to justify using the standard. Nevertheless, WHD used this standard for the Kansas Heavy Survey, and our review of craft reports showed that exactly 3 workers and 2 contractors were used to calculate the rates for two key job classifications – Truck Drivers (a union rate)[14] and Crane Operators ($37.05) – in two metropolitan counties.

Since WHD had not established criteria for continued use of the 3/2 standard, it would have been more compliant with existing policy to conduct the survey using the 6/3 standard. WHD's position was that its decision to use the 3/2 standard was an exercise of its broad discretion under the DBA, despite referring to several cases in which the Administrative Review Board expressed concern that publishing wage rates in metropolitan areas using such limited amounts of data may not have resulted in wage rates that actually prevailed.

[13] The Administrative Review Board issues final agency decisions for the Secretary of Labor in cases arising under a wide range of worker protection laws. Road Sprinkler Fitters Local Union No. 669, ARB Case No. 10-123, June 20, 2012.

[14] The Construction Labor Research Council concluded that nonunion rates were 15 to 37 percent lower than union rates in 2015. *Union-Nonunion Wage and Fringe Benefits Comparison*.

ONE STATES' PREVAILING WAGE FOR ONE JOB CLASSIFICATION IN AT LEAST 11 COUNTIES NEEDS TO BE RECALLED

For the Kansas Heavy Survey, we determined that the 2 contractors used to meet WHD's minimum data requirement and calculate the wage rate for Painter/Spray (in 11 metropolitan counties) were actually a single contractor.

Three craft reports contained the wage rate calculation for the Painter/Spray job classification. Each craft report listed two projects reported under two separate WD-10 IDs. Each project in the craft reports was completed by a similarly named contractor. The name of each contractor was formed by combining the name of one distinctly owned company with the name of another distinctly owned company. One combined name had a slash (/) between the two company names. The other combined name had a dash (-) between the two company names and an acronym for the first company at the end. The craft reports also showed that one contractor paid 8 workers, and the other paid 3 workers to perform on the projects. However, the two WD-10s (submitted by a union) reported the two projects were completed by one contractor.

We discussed this issue with WHD officials who agreed that the workers had been paid by one contractor and that it had published wage rates based on this deficient wage data. Officials further acknowledged that their data clarification process failed to detect the flawed submissions and that they would have to republish applicable wage determinations. Officials also said that they appreciated OIG bringing this error to their attention, because it is contrary to their policy to publish DBA wage rates based on data from only one contractor. We noted that wage determinations for the remaining 9 metropolitan counties in the state of Kansas all showed the same union rate (for Painter/Spray) as the 11 counties we tested.

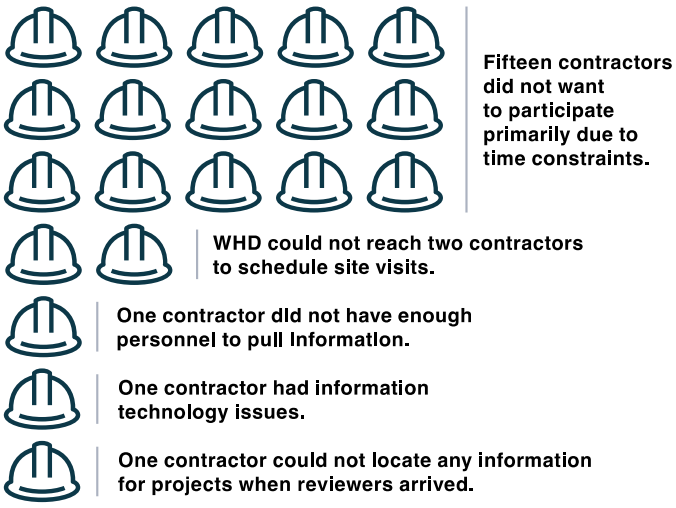
WAGE RATES CALCULATED USING DATA THAT LIKELY CONTAINED ERRORS

To ensure the accuracy of wage data used in rate calculations, WHD used three verification processes, each of which relied upon the voluntary participation of contractors. In one process (Third Party Data Verification), WHD randomly sampled wage data submitted by anyone other than a holder of payroll (such as unions and associations) and made phone calls to contractors to verify the data. In the second (Contractor Data Verification), WHD verified the greatest of 5 percent of WD-10 reports submitted by all contractors, or at least 5 WD-10

reports. The third process (Onsite Verification),[15] involved drawing a sample of contractors from those with the greatest impact on wage rates, and conducting site visits to verify the accuracy of the wage data. In onsite verifications, actual payroll and construction records that supported WD-10s were to be reviewed. It is our position that the original documents examined in onsite verifications were preferable to phone calls and copies, especially with respect to detecting inaccurate, erroneous, and misleading submissions.

For 6 sampled surveys, WHD selected 49 contractors for onsite verifications. However, 20 of the 49 selected contractors gave various reasons for not having their wage data verified for accuracy. Those reasons were listed in Verification Reports prepared by the certified public accounting firm (CPA)[16] WHD hired to conduct the onsite reviews (Figure 2).

FIGURE 2: CONTRACTOR'S NON-PARTICIPATION FOR ON-SITE VISITS



Source: State Verification Reports

Verification Reports also showed that the CPA generally identified inaccuracies in the number of workers and hourly wage rates reported for the 29 contractors who participated and were visited. These errors represented 91 percent of the 832 errors the CPA found. WHD's auditors generally noted that the persons who completed WD-10s were no longer with the company; therefore, variances in the

[15] In response to a GAO report, new survey verification procedures were instituted. *Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement* (1999)

[16] Harper, Rains, Knight & Company P.A.

reported and verified number of workers could not be explained. Despite the lack of onsite verification of the 20 contractors' wage data, WHD used the data to calculate prevailing wage rates and said that even though the contractors declined to participate in onsite reviews, this did not make their wage data unusable. We recognize that the contractors' wage data could have been verified using 1 of the other 2 verification methods that provided lower levels of assurance. However, failing to authenticate the data using onsite verifications (that inherently increased the likelihood that errors would be detected and corrected), increased the risk that rates calculated using the data did not reflect prevailing wages.

VOLUNTARY PARTICIPATION RESULTED IN LESS WAGE DATA TO CALCULATE RATES

WHD's regulations for determining prevailing wages provided for rates to be calculated using wages (and other construction related information) that were voluntarily submitted. The regulations stated the following at 29 CFR, Section 1.3(a),

> The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area.

WHD officials said that achieving a sufficient level of participation from those authorized to provide wage data was their most significant challenge related to publishing prevailing wage rates. Further, officials emphasized that they did not have the authority to compel participation. Our analysis of contractor contact data for 7 sampled surveys in Arkansas, Kansas, and Nevada confirmed WHD's challenge.[17] We determined that 53 percent of more than 8,000 contractors eligible to provide wage data did not respond to WHD's requests.

While it was possible that the wage data of non-responsive contractors may not have been usable or may not have changed the results, these unknown factors presented increased risk that published wage rates may not have reflected prevailing rates for the 7 surveys. WHD officials stated that they had implemented a number of new strategies to increase the likelihood of collecting enough wage data to ensure prevailing wage rates accurately reflected wage rates paid in particular counties, including:

[17] One sampled survey was cancelled (Kansas Residential), another used data provided by agencies (Georgia), and a third was ongoing (Minnesota Building).

- Publishing press releases that announced the surveys;
- Conducting pre-survey briefings with building trades and local unions, and their contractors;
- Introducing mid-survey briefings in 2014, which, in at least one case, led to an influx of additional data;
- Contracting for services to promote participation; and
- Creating an internet platform for interested parties to submit WD-10 wage reports electronically.

In April 2017, during one its free prevailing wage seminars that was held in the Southeast Region, WHD informed participants (private contractors, state agencies, federal agencies, unions, and workers) that absent sufficient participation in its wage surveys, it had to publish rates (that might not be representative of relevant localities) based only on the data that it was able to collect. We acknowledge WHD efforts to increase contractors' and other interested parties' participation in the wage determinations process. However additional strategies will be needed to overcome the challenge the agency continues to face at collecting sufficient data to publish accurate prevailing wages.

DBA WAGE DETERMINATIONS PROGRAM LACKED PERFORMACE GOALS AND MEASURES FOR DATA QUALITY AND ACCURACY

The GPRA Modernization Act of 2010 emphasized the use of goals and measures to improve outcomes and required agencies to report performance against those goals. However, WHD had no performance goals or measures that addressed the quality of prevailing wage rates for the DBA Wage Determinations Program. In DOL's FY 2015 Annual Performance Report (APR), WHD reported the following with respect to the one measure it had in place for the DBA Wage Determinations program, the average age of non-residential construction wage rates:

> While the measure tracks timeliness in completing surveys, the measure does not adequately reflect survey quality or accuracy.

In the FY 2016 APR, WHD reported:

> WHD is identifying ways to enhance rate quality. WHD is working on improvements to…survey where rates are out of date and construction is contemplated.

In 1985, WHD regulations[18] and Agency Administrative Memorandum 144 required agencies[19] to submit (to the extent practical) anticipated construction information for the upcoming year, which was not collected during our audit period (FYs 2013 – 2017). The required information included an estimate of the number of construction projects that would require wage determinations, construction locations, and the types of construction. This information was due each year by April 10, and agencies were to notify WHD of any significant changes during the fiscal year. In January 2017, WHD reminded agencies of the requirement to submit this information with the issuance of Agency Administrative Memorandum 224.[20] This memorandum required agencies to submit information projecting 3 years forward. WHD officials stated that (despite agencies providing the requested data) the areas where anticipated construction was to occur required enough past construction to ensure a survey will generate sufficient wage data to publish new wage rates.

In DOL's FY 2017 APR, the DBA Wage Determinations Program was not mentioned at all. Moreover, the program was removed from DOL's Strategic Plan for FYs 2018-2022. As a result, for FY 2018 and beyond neither Congress nor the public will be informed about the success of the program or the quality of DBA wage rates.

In its FY 2018 Operating Plan, WHD published its new and only performance measure for the DBA Wage Determinations Program – Percent of Wage Classifications Published at the County or Group level (as opposed to using data beyond a county's surrounding counties; SuperGroup and Statewide). WHD officials said the new measure focused on survey sufficiency and would allow them to better review survey quality and response rates. However, the Operating Plan did not contain any performance goals or objectives for the new measure. In its FY 2019 Operating Plan, WHD reported a target of 56 percent of building, heavy, and residential wage classifications published at the County or Group level (3-year rolling average). WHD officials stated that they plan to conduct the first calculations for the new measure in FY 2022.

[18] 29 CFR, Part 1, Section 1.4, Outline of Agency Construction Programs.

[19] Per 29 CFR Section 1.2 (d), agency means federal agency, state highway department under 23 U.S.C. 113, or recipient state or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

[20] The Administrator of WHD issued Agency Administrative Memorandum 224 to "All Contracting Agencies of the Federal Government and the District of Columbia."

WORKERS AT INCREASED RISK OF BEING PAID LESS THAN PREVAILING WAGES

We believe that it was more likely than not that published wage rates last updated 1988 – 1999 were lower than respective prevailing wage rates during FYs 2014 – 2017. Therefore, the workers in the examples that follow were at increased risk of being paid less than prevailing wages. [21]

HEAVY AND BUILDING CONSTRUCTION WORKERS IN NEW YORK, TEXAS, AND PUERTO RICO

- During FYs 2015 – 2017, one federal agency spent $67.7 million for heavy construction in two Texas counties where applicable wage determinations contained nonunion wage rates for Dozer Operators ($7.25) that had not been updated since 1994, Laborers ($7.25) since 1987, and Carpenters ($7.79) since 1980. However, Executive Order (EO) 13658 guaranteed construction workers at least $10.10 per hour for covered contracts awarded as of January 2015.[22]

- During May and June of 2017 two federal agencies spent a total of $401,331 for a building project in one New York County and a highway project in another. Applicable wage determinations contained a nonunion wage rate for Laborers ($11.02) that had not been updated since 1988 and Cement Masons ($16.01) since 1989.

- During June 2014 – June 2017, Puerto Rico spent federal grant funds totaling $38.2 million for street improvements. The applicable wage determination for heavy and highway construction contained nonunion minimum wage rates (generally $7.25) that had not been updated since 1995.

[21] We obtained Federal spending data from the Federal Procurement Data System – Next Generation.

[22] This minimum amount increased to $10.15 in 2016, $10.20 in $2017, and $10.35 in 2018.

RESIDENTIAL CONSTRUCTION WORKERS IN KANSAS

During June 2014 – June 2017, the City of Wichita, KS, in Sedgwick County, spent federal grant funds totaling $2.7 million to rehabilitate more than 600 housing units. To complete this construction, wage determinations contained rates to pay workers in key classifications such as Carpenter ($12.42), Cement Mason ($11.26), Painter ($12.64), Plumber ($13.73), and Backhoe Operators ($10.24) that had not been updated since 1999.

LANDSCAPERS ON ONE BUILDING CONSTRUCTION PROJECT IN KANSAS

In December 2014, the Landscaper job classification that a contractor needed to complete a building construction project in Kansas was missing from the wage determination (published in 2002) that was included in the contract award. In January 2015, the contractor requested WHD's approval to pay Landscapers an hourly rate of $9.69 (the second lowest nonunion rate on the wage determination) under the conformance process. WHD implemented the conformance process[23] for instances where wage determinations did not contain job classifications that contractors needed to complete covered construction projects.[24] Generally, job classifications were missing because WHD did not collect enough wage data to publish a wage rate. WHD approved proposed rates provided they were reasonable compared to other wage rates on the applicable wage determination. [25]

For the Kansas building project, WHD concluded that the contractor's proposed rate of $9.69 for Landscapers was reasonable when compared to a $9.69 rate for Laborers that had been published in the wage determination 12 years prior. WHD's approval letter stated that the conformed job classification and wage rate was to be paid to all workers performing work within the job classification. If the Laborer wage rate had been current, it is more likely than not that the wage rate WHD approved for Landscapers would have been higher. This contract was awarded prior to the effective date (January 1, 2015) of EO 13658 that guaranteed workers would at least receive $10.10 per hour.

[23] 29 CFR, Section 5.5

[24] WHD stated that in some instances construction projects involved unusual classifications for which a survey was not expected to produce sufficient data.

[25] These rates were good for one time and could only be used for the specific contract under which they were requested.

BACKHOE AND TRACKHOE WORKERS IN MINNESOTA

With the publication of a new Minnesota Building Survey in June 2018, the minimum hourly pay for Backhoe and Trackhoe workers in 3 counties declined by 21 percent to 35 percent (Table 2).

TABLE 2: DECLINE IN PREVAILING WAGE RATES FOR BACKHOE AND TRACKHOE WORKERS

Job Classification Backhoe/Trackhoe Workers			
County	**2009–2018 Union Rate**	**2018 Non-union Rate**	**Hourly Decrease**
Anoka	$39.05	$30.88	$8.17
Aitkin	$39.05	$25.19	$13.86
Clearwater	$37.28	$25.22	$12.06

Source: Generated by OIG using data from WDOL.gov.

During the prior survey (published in 2009) these counties were grouped in order to have enough wage data to calculate applicable rates, resulting in union rates prevailing. The rate reductions occurred when WHD obtained enough wage data within each county to publish the wage rate at the County level. Publishing more rates at the County level is WHD's new performance measure for the DBA Wage Determinations Program. Therefore, WHD should develop a risk response for how it plans to handle the impact of wage rate reductions on DBA-covered workers and the reputation of the program.

UNCERTAINTY OVER PREVAILING WAGES

We did not determine how much workers were actually paid to complete covered construction projects. Furthermore, we recognize that due to economic conditions, some wage rates could have remained stagnant or decreased for certain job classifications in certain counties. We also acknowledge that wage rates could increase, decrease, or remain constant when new surveys are conducted and rates are published at the county level. WHD maintained that if sufficient data had been received to publish county-specific rates, those rates may not have reflected that there were county-by-county differences. However, our analysis of craft reports showed that rates for the same job classifications generally were different on a county-by-county basis as we illustrate in the following examples from 3 sample surveys.

Nevada Heavy Survey Cement Masons in three counties were paid nonunion hourly rates of $35.40 in one county, $43.40 in another county, and $50.28 in the other. Also, in the Nevada Building Survey, painters in two counties were paid nonunion hourly rates of $27.07 and $33.45. Furthermore, in the Kansas Building Survey, bricklayers were paid union rates of $19.82 and $20.31 in one county, $25.84 in another county, and $33.40 in yet another. These types of county-by-county differences reported in WD-10s represented the increased risk that the rates published for counties (with no county-specific data) did not reflect prevailing wages.

CONCLUSION

Overall, the weaknesses we identified in this report negatively affected WHD's ability to consistently provide prevailing wages that are timely and accurate. These weaknesses could have been mitigated if WHD had used alternative methods to improve the timeliness of updates to prevailing wage rates, developed additional strategies to mitigate the risk of collecting insufficient amounts of wage data, and developed performance goals and measures to improve the quality and accuracy of wage rates. Until WHD effectively addresses these weaknesses, it will continue to place construction workers covered by the DBA at increased risk of being paid less than prevailing wages. Furthermore, the extent to which published rates actually reflect prevailing wages will continue to be questionable.

OIG'S RECOMMENDATIONS

As WHD continues to make improvements in the areas we identified, we recommend the Acting Administrator for Wage and Hour:

1. Continue efforts to reduce the amount of time to complete DBA wage surveys and identify additional strategies to improve timeliness such as the use of statistical sampling or a risk-based approach.

2. Develop and implement a risk-based strategy to manage rates over 10 years old.

3. Consult with BLS and evaluate alternative methods to update wage rates such as the Consumer Price Index, and Occupational Employment Survey data.

4. Obtain an official opinion from the Administrative Review Board about the use of states' non-highway prevailing wage rates.

5. Continue efforts to identify new strategies to increase contractors' participation in order to obtain more relevant wage data.

6. Develop performance goals and measures to gauge and improve the quality of DBA prevailing wage rates, including the accuracy of information reported in WD-10s.

7. Validate the accuracy of documentation that supported the Painter/Spray wage rate for the Kansas Heavy Survey and if warranted take necessary actions to remove the job classification from applicable wage determinations. Likewise, apply these actions to other surveys in which the documentation was used.

8. Seek regulatory changes if necessary for implementing any of these recommendations.

SUMMARY OF WHD'S RESPONSE

The Wage and Hour Division agreed with the OIG's recommendations. Management's response to our draft report is included in its entirely in Appendix B.

We appreciate the cooperation and courtesies the Wage and Hour Division extended us during this audit. OIG personnel who made major contributions to this report are listed in Appendix C.

Elliot P. Lewis
Assistant Inspector General for Audit

EXHIBIT 1: 10 SAMPLE SURVEYS

We sampled 10 surveys conducted by 4 of WHD's 5 regional offices during FYs 2013-2017. Our samples did not include the Northeast Region.

Region	Survey State/Type	Survey Initiated	Publication Date
Midwest	Kansas Statewide Building	11/27/2012	10/09/2015
Midwest	Kansas Statewide Heavy	03/01/2013	09/05/2014
Midwest	Kansas Statewide Residential	01/12/2015	Cancelled
Midwest	Minnesota Statewide Building	05/26/2015	06/22/2018
Southeast	Georgia Highway	09/19/2014	11/25/2016
Southwest	Arkansas Statewide Building	01/23/2015	04/21/2017
Southwest	Arkansas Statewide Heavy	01/23/2015	04/21/2017
Western	Nevada Statewide Building	01/22/2014	01/20/2017
Western	Nevada Statewide Highway	01/22/2014	01/20/2017
Western	Nevada Statewide Residential	01/22/2014	01/20/2017

Source: Generated by OIG using Survey Status spreadsheet provided by WHD.

EXHIBIT 2: 57 WAGE SURVEYS INITIATED FY 2013 – FY 2017

FY Start	REGION	Surveys Initiated and Published	Initiation Date	Submission Date	Publication Date
2013	MW	KANSAS STATEWIDE HVY	3/1/13	7/9/14	7/25/14
2013	MW	KANSAS STATEWIDE BUILDING	11/27/12	7/8/15	10/9/15
2013	NE	NEW YORK STATEWIDE RESIDENTIAL	1/14/13	3/17/15	7/3/15
2013	NE	VIRGINIA STATEWIDE BUILDING	6/17/13	1/11/16	12/23/16
2013	SW	COLORADO STATEWIDE BUILDING	5/2/13	7/3/15	10/9/15
2013	W	2013 GUAM STATEWIDE BUILDING	4/1/13	2/10/14	3/14/14
2013	W	2013 GUAM STATEWIDE - HEAVY	4/1/13	2/10/14	3/14/14
2013	W	2013 GUAM STATEWIDE - RESIDENTIAL	4/1/13	2/10/14	3/14/14
2013	W	CALIFORNIA RURAL RESIDENTIAL	5/28/13	5/14/15	8/28/15
2014	NE	DELAWARE STATEWIDE BUILDING	3/4/14	1/15/16	5/13/16
2014	NE	DELAWARE STATEWIDE HEAVY	3/4/14	1/15/16	5/13/16
2014	NE	DELAWARE STATEWIDE RESIDENTIAL	3/4/14	1/15/16	5/13/16
2014	NE	PLYMOUTH AND WORCESTER MASSACHUSETTS BUILDING	7/10/14	4/4/16	6/24/16
2014	NE	MASSACHUSETTS STATEWIDE HWY	Not Provided	1/1/17	6/9/17
2014	NE	MAINE STATEWIDE BUILDING	5/2/14	1/31/17	8/11/17
2014	NE	MAINE STATEWIDE HEAVY	5/2/14	1/31/17	8/11/17
2014	SE	GEORGIA STATEWAY HIGHWAY	Not Provided	10/3/16	11/25/16
2014	SE	FLORIDA STATEWIDE BUILDING	5/1/14	8/16/16	12/16/16
2014	W	2014 GUAM STATEWIDE - BUILDING	5/1/14	2/8/15	5/8/15
2014	W	2014 GUAM STATEWIDE - HEAVY	5/1/14	2/8/15	5/8/15
2014	W	2014 GUAM STATEWIDE RESIDENTIAL	5/1/14	2/8/15	5/8/15
2014	W	NEVADA STATEWIDE BUILDING	1/22/14	9/8/16	1/20/17
2014	W	NEVADA STATEWIDE HEAVY	1/22/14	9/8/16	1/20/17
2014	W	NEVADA STATEWIDE RESIDENTIAL	1/22/14	9/8/16	1/20/17
2015	MW	KANSAS STATEWIDE RESIDENTIAL	5/28/15	N/A	Canceled
2015	MW	MINNESOTA STATEWIDE BUILDING	5/26/15	6/22/18	9/28/18
2015	NE	NEW HAMPSHIRE STATEWIDE BUILDING	2/3/15	6/16/17	9/29/17
2015	NE	NEW HAMPSHIRE STATEWIDE HEAVY	2/3/15	6/16/17	9/29/17
2015	SE	ALABAMA STATEWIDE BUILDING	1/23/15	8/2/17	10/6/18
2015	SE	ALABAMA STATEWIDE HEAVY	1/23/15	8/2/17	10/6/18
2015	SW	ARKANSAS STATEWIDE BUILDING	1/23/15	1/9/17	4/21/17
2015	SW	ARKANSAS STATEWIDE HEAVY	1/23/15	1/9/17	4/21/17
2015	W	2015 GUAM STATEWIDE BUILDING	4/24/15	2/24/16	5/13/16
2015	W	2015 GUAM STATEWIDE HEAVY	4/24/15	2/24/16	5/13/16
2015	W	2015 GUAM STATEWIDE RESIDENTIAL	4/24/15	2/24/16	5/13/16
2015	W/SE	MISSISSIPPI STATEWIDE BUILDING	2/23/15	4/3/17	7/28/17
2015	W/SE	MISSISSIPPI STATEWIDE HEAVY	2/23/15	4/3/17	7/28/17
2016	NE	CONNECTICUT BUILDING	4/29/16	9/19/18	12/14/18
2016	NE	NEW YORK BLDG (Jefferson, Madison, Onondaga and Oswego)	2/1/16	8/2/17	9/29/17
2016	SE	NORTH CAROLINA STATEWIDE RESIDENTIAL	2/15/16		On Going
2016	SE	SOUTH CAROLINA STATEWIDE RESIDENTIAL	2/15/16	10/18/17	12/8/17
2016	SW	NEW MEXICO BUILDING	4/15/16	9/26/18	12/14/18
2016	SW	NEW MEXICO HEAVY	4/15/16	9/26/18	12/14/18
2016	W	2016 GUAM BUILDING	4/15/16	2/8/17	7/7/17
2016	W	2016 GUAM HEAVY	4/15/16	2/8/17	7/7/17
2016	W	2016 GUAM RESIDENTIAL	4/15/16	2/8/17	7/7/17
2016	W	ALASKA STATEWIDE RESIDENTIAL	7/25/16	N/A	Canceled
2017	NE	NEW YORK BUILDING (Rural Counties)	6/23/17		On Going
2017	NE	PENNSYLVANIA RESIDENTIAL (Metro Counties)	4/24/17		On Going
2017	NE	VERMONT STATEWIDE BUILDING	2/22/17		On Going
2017	NE	VERMONT STATEWIDE HEAVY	2/22/17		On Going
2017	SE	TENNESSEE STATEWIDE BUILDING	6/6/17		On Going
2017	SW	NORTH DAKOTA STATEWIDE HEAVY	6/27/17		On Going
2017	SW	OKLAHOMA RESIDENTIAL (Metro Counties)	1/19/17		On Going
2017	W	2017 GUAM STATEWIDE BUILDING	Not Provided	2/12/18	4/13/18
2017	W	2017 GUAM STATEWIDE HEAVY	Not Provided	N/A	Canceled
2017	W	2017 GUAM STATEWIDE RESIDENTIAL	Not Provided	2/12/18	4/13/18

Source: Obtained from WHD.

EXHIBIT 3: DBA WAGE DETERMINATIONS SURVEY PROCESS – INITIATION TO SUBMISSION FOR PUBLICATION

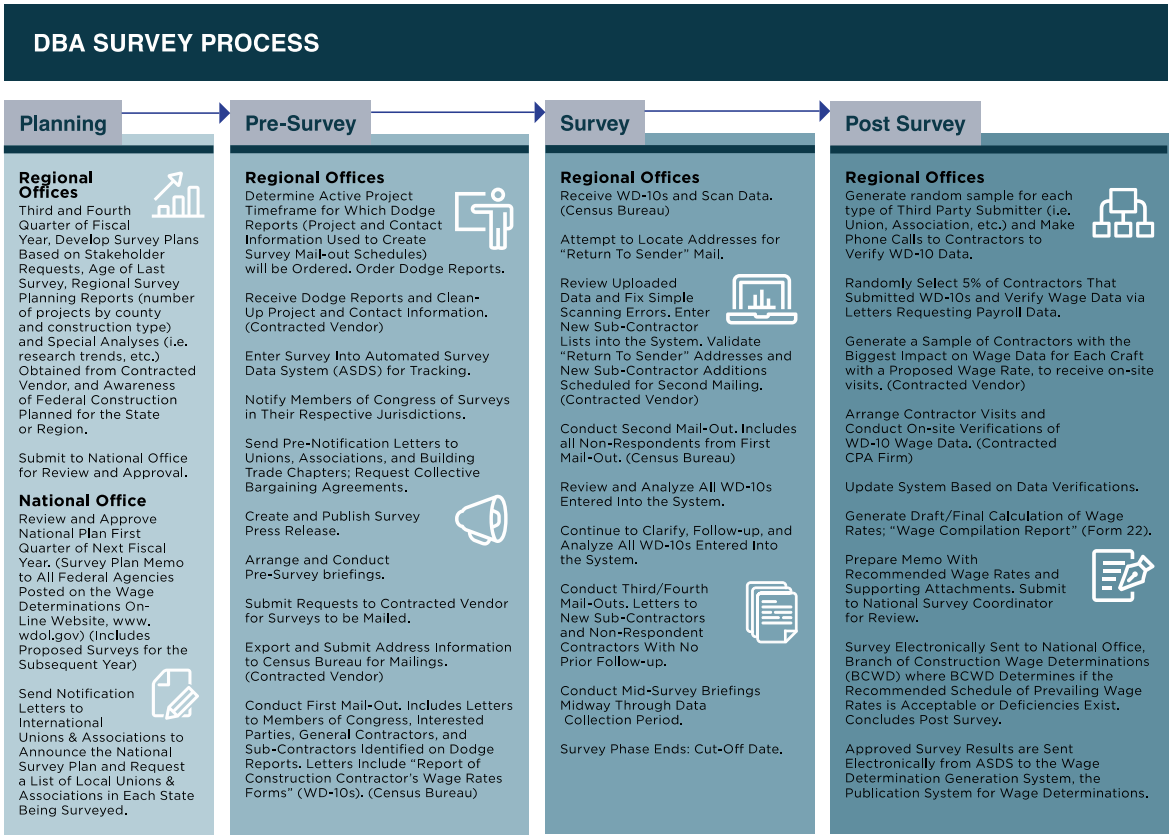
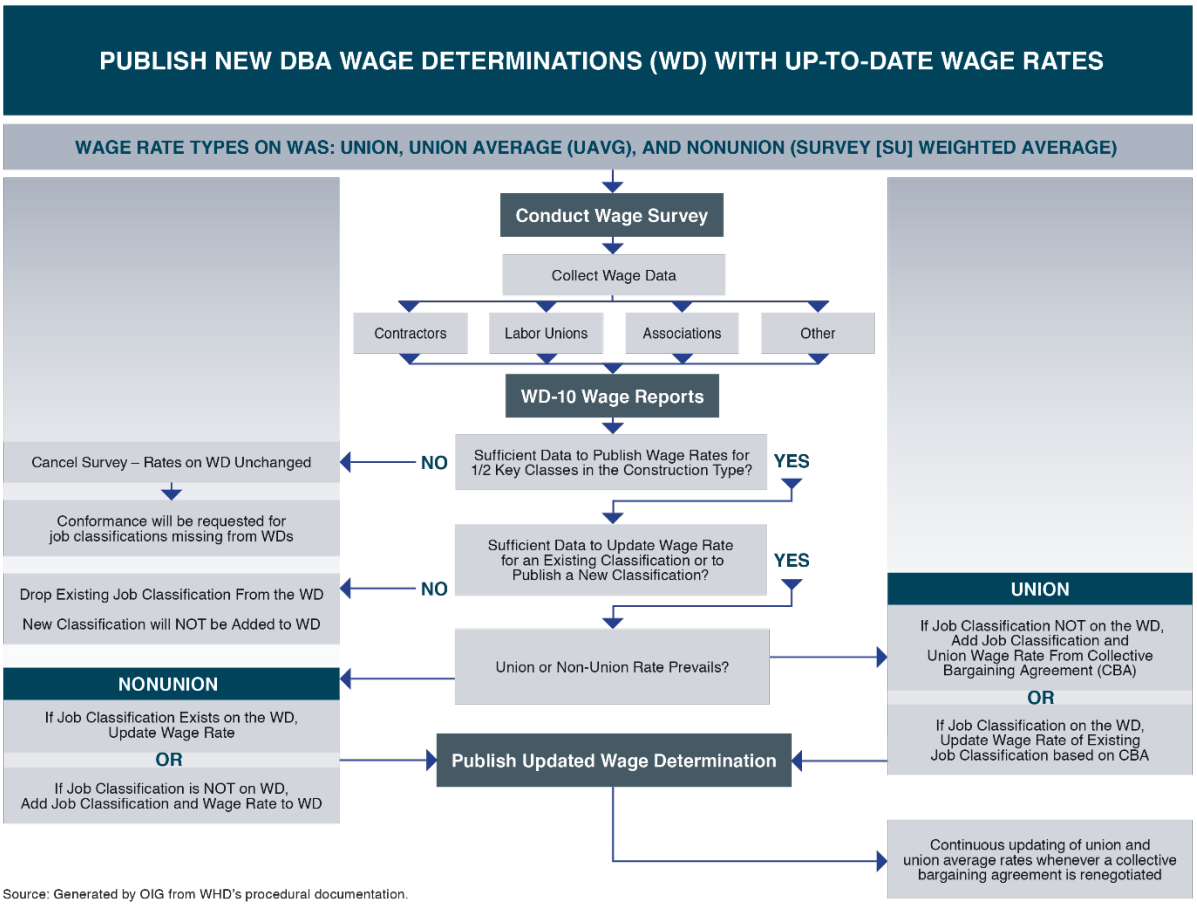


EXHIBIT 4: PROCESS FLOW FOR PUBLISHING NEW WAGE DETERMINATIONS

Each wage determination was published based on a unique survey. Therefore, each survey resulted in new wage determinations replaced existing wage determinations.



Source: Generated by OIG from WHD's procedural documentation.

EXHIBIT 5: KEY JOB CLASSIFICATIONS

WHD has determined certain job classifications to be key or necessary to complete each of the four types of construction: building, highway, heavy, and residential. Every construction project should include workers paid wages in these key classes and therefore provide wage rates to determine those that prevail in localities.

Building Construction	Residential Construction
1. Heat and frost insulators/asbestos workers/pipe insulators	1. Bricklayers
2. Bricklayers	2. Carpenters
3. Boilermakers	3. Cement masons
4. Carpenters	4. Electricians
5. Cement masons	5. Iron workers
6. Electricians	6. Laborers
7. Iron workers	7. Painters
8. Laborers	8. Plumbers
9. Painters	9. Power equipment operators (operating engineers)
10. Pipefitters	10. Roofers
11. Plumbers	11. Sheet metal workers
12. Power equipment operators (operating engineers)	12. Truck drivers
13. Roofers	
14. Sheet metal workers	
15. Tilesetters	
16. Truck drivers	
Heavy and Highway Construction	
1. Carpenters	
2. Cement masons	
3. Electricians	
4. Iron workers	
5. Laborers	
6. Painters	
7. Power equipment operators (operating engineers)	
8. Truck drivers	

Source: Generated by OIG from WHD's procedural documentation.

APPENDIX A: SCOPE, METHODOLOGY & CRITERIA

SCOPE

We focused on whether WHD timely and accurately determined prevailing wage rates needed for federal and federally-funded construction projects for the period October 1, 2013, to September 30, 2017. We expanded our time period to September 30, 2018 to ensure we reported the most current age of prevailing wage rates. We performed audit work at the WHD National Office in Washington, DC and at one of DOL's 5 regional offices in Chicago, IL. We reviewed laws, policies, procedures, reports, documents, and interviewed National Office and Regional Office officials and staff. We did not re-perform prevailing wage surveys.

METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our objectives, we obtained an understanding of WHD's Wage Determinations Process. We also reviewed federal laws and labor regulations; reviewed WHD's policies and procedures; conducted walkthroughs of the wage determinations process; interviewed key management and staff personnel at WHD headquarters and regional offices; and analyzed and identified key decision making and control processes. Finally, we selected judgmental samples of surveys and statistical samples of wage rates recommended for publication in wage determinations, and reviewed documentation that supported wage rate computations and decisions. In developing our audit procedures, we also considered (in part) the substance of three complaints the DOL OIG received about the DBA wage determinations process.

SAMPLING PLAN

Selection of Regional Offices to Visit

Initially, we judgmentally selected three (Midwest, Southwest, and Northeast) of WHD's five regional offices (Midwest, Southwest, Western, Southeast and Northeast) with the highest volume of federal construction contract dollars for site visits. We ensured the selected offices represented one area overseen by each WHD's three Regional Survey Coordinators.

We selected the Midwest Region as the first region we planned to visit due to a complaint received about the age of wage rates. Based on our visit to the Midwest Regional Office and receipt of a thorough walkthrough of the survey process and the Automated Survey Data System (ASDS), which all regions used under the guidance and direction of the Midwest National Survey Coordinator, we decided not to visit the other two regions.

Selection of DBA Wage Surveys

Survey activity conducted by the Midwest Regional Office during FYs 2013 – 2016 consisted of 5 surveys when we initiated our audit. Therefore, we selected 100 percent of the surveys conducted by the Midwest office for our audit. These surveys covered three of the four construction types (Building, Residential, and Heavy).

- Iowa Statewide Building
- Minnesota Statewide Building
- Kansas Statewide Residential
- Kansas Statewide Heavy
- Kansas Statewide Building

The Midwest Region did not conduct any surveys for the highway construction type during FYs 2013 – 2016. We subsequently excluded the Iowa survey because WHD initiated the survey prior to FY 2013.

For the expanded scope (through FY 2017) we judgmentally selected 6 surveys from the 8 surveys published for three regions (Southeast, Southwest, and Western). We excluded the Northeast Region because states in the region were generally forced-union states, which indicated wage rates would predominantly be union rates.

Of the 2 surveys published by the Southeast Regional Office, we selected one highway survey that was conducted by WHD because the other regions had not published a survey for this construction type: Georgia Highway.

For the Southwest Regional Office, we selected one survey that concurrently covered two construction types (resulting in 2 published surveys), Arkansas Building and Heavy.

Of the 4 surveys published by the Western Regional Office, we selected one survey that concurrently covered three construction types (resulting in three published surveys), Nevada Building, Heavy, and Residential.

Altogether, we selected 10 wage surveys (8 published and 2 unpublished) conducted during FYs 2013 – 2017 for testing, as follows:

1. Minnesota Statewide Building (Published June 2018)
2. Kansas Statewide Residential (Cancelled)
3. Kansas Statewide Heavy
4. Kansas Statewide Building
5. Arkansas Building
6. Arkansas Heavy
7. Nevada Building
8. Nevada Heavy
9. Nevada Residential
10. Georgia Highway

Selection of Wage Rates for Testing

From Wage Compilation Reports (WD-22s) we randomly selected a sample of crafts with a ± 5 percent precision and 95 percent confidence level and determined the following sample sizes for accuracy and timeliness testing.[26]

Iowa Statewide Building (150)[27]
Kansas Statewide Building (151)
Kansas Statewide Heavy (102)
Arkansas Building (138)
Arkansas Heavy (111)
Nevada Building (116)
Nevada Heavy (121)
Nevada Residential (59)
Georgia Highway (152)

[26] We did not test Kansas Residential (cancelled) and Minnesota Building (ongoing).

[27] We initially selected Iowa, but later excluded it because it was initiated prior to FY 2013.

ACCURACY AND TIMELINESS TESTS

We compared the recommended wage rate listed in the ASDS database to the prevailing wage rate published on DOL website from the Wage Determination Generation System (WDGS). After comparing the wage rates, we analyzed supporting documentation WD-10's to determine if sufficient data supported the wage rates. We also obtained Wage Age Reports from WDGS and examined the age of wage rates as of September 30, 2018.

To determine the timeliness of wage rates, we compared the most recent survey issuance date to the previous survey issuance date. We also compared the process time for each major step of the process to the WHD Survey Process Time line Model.

DATA RELIABILITY

To assess data reliability, we tested the data's appropriateness relative to its intended purpose of supporting WHD's process for publishing prevailing wage rates in wage determinations. We relied on computer-generated data from the ASDS and WDGS in the form of Excel files and various reports including WD-10s and WD-22s. We also received data in the form of contracts, reports, and PowerPoints from the WHD National Survey Coordinator for the Midwest Region and WHD Audit Liaison.

We conducted tests to determine the reliability of data in four areas:

- Validity – data directly supported the process of determining prevailing wage rates and data the National Office published in Wage Determinations for use by the public.

- Completeness – with noted exceptions, the data was generally complete, consisted of information required, and was usable for testing conducted.

- Accuracy – data tested in source documents compared to ASDS/WDGS outputs and data reported in Wage Determinations to the supporting documentation in the prevailing wage determination process were accurate for audit use.

- Consistency – data analyzed for the audit period of FY 2013 through FY 2017 yielded similar results in similar analyses and was generally consistent for testing conducted.

INTERNAL CONTROLS

In planning and performing our audit, we considered WHD's internal controls relevant to our audit objectives by obtaining an understanding of those controls, and assessing control risks for achieving our objectives. The objective of our audit was not to provide assurance of the internal controls; therefore, we did not express an opinion on WHD's internal controls. Our consideration of internal controls for administering the DBA Wage Determinations program would not necessarily disclose all matters that may be significant deficiencies. Because of the inherent limitations on internal controls, or misstatements, noncompliance may occur and not be detected.

CRITERIA

- Agency Administrative Memorandum 144
- Agency Administrative Memorandum 224
- CFR Title 29, Part 1, Procedures for Predetermination of Wage Rates
- CFR Title 29, Part 5, Labor Standards Provisions Applicable To Contracts Covering Federally Financed And Assisted Construction
- Davis-Bacon Act (23 U.S.C.A. §113)
- DOL FY 2014-2018 Strategic Plan
- GAO-14-704G, Standards for Internal Control in the Federal Government, September 2014
- Government Performance Results Act (GPRA) Modernization Act of 2010
- OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control, July 15, 2016

APPENDIX B: WHD'S RESPONSE TO THE REPORT

U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General

FROM: KEITH SONDERLING
Acting Administrator, Wage and Hour Division

SUBJECT: Response to the Office of Inspector General's Draft Report: Better Strategies Are Needed To Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates

The Wage and Hour Division ("WHD") appreciates the opportunity to respond to the March 1, 2019 draft report of the Office of Inspector General ("OIG") titled *Better Strategies Are Needed To Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates.*[1] The report provides eight recommendations. WHD's responses to these recommendations are set forth below. In a separate attachment, we are providing clarification on specific findings and conclusions contained in the report.

Recommendation 1: Continue efforts to reduce the amount of time to complete DBA wage surveys and identify additional strategies to improve timeliness, such as the use of statistical sampling or a risk-based approach.

Response: WHD agrees with the goal of improving survey timeliness. WHD appreciates OIG's recognition that WHD has successfully reduced the amount of time it takes to complete a wage survey by more than 50% since 2002. Nevertheless, WHD is working to improve its current business processes and technological capabilities to reduce the overall time it takes WHD to execute a survey and will continue those efforts. WHD also notes that survey timeliness depends upon both participant response rates and the quality of data that participants submit to WHD through the WD-10 form. WHD recognizes that Davis-Bacon Act ("DBA") wage determinations must be as timely and accurate as possible in order for the agency to publish wage rates that are truly reflective of the rates that actually prevail in a designated area and that are useful to contracting parties. Accordingly, WHD appreciates many of the conclusions and recommendations set forth in OIG's report and will consider and, if appropriate, implement those recommendations as part of the agency's continued dedication to publishing high-quality, robust wage determinations in a timely manner. Importantly, however, WHD must balance timeliness with quality and would need to carefully consider whether statistical sampling would have a negative impact on survey quality.

[1] WHD has prepared this response based on the draft report that WHD received from OIG on March 1, 2019, as well as technical corrections to that draft communicated by OIG on March 18, 2019. Accordingly, WHD's references to specific page numbers and quotations of certain language set forth in the draft report may not precisely mirror the pagination and verbiage used in the final report.

Recommendation 2: Develop and implement a risk-based strategy to manage rates over 10 years old.

Response: WHD agrees with this recommendation. WHD will manage DBA wage rates that are more than ten years old through survey planning and by implementing new strategies to address such wage determinations. In determining where to conduct DBA wage surveys, WHD considers multiple factors, including the age of existing DBA wage rates, the likelihood that WHD will be able to meet survey sufficiency standards given the quantity of construction that has occurred in a particular geographic area, the number of workers impacted, projected federal spending relative to other localities and types of construction, and the willingness of our stakeholders to participate. WHD consults multiple external data sources to evaluate these factors and prioritize accordingly. As part of its survey planning process, WHD will continue to improve its planning and prioritization using the best available information. Moreover, WHD will develop and implement a new strategy to identify DBA wage determinations that are more than ten years old and are unlikely to be in current use by contracting parties. WHD will then adopt a new risk-based approach to managing such wage determinations, such as removing those wage determinations from Wage Determinations OnLine (WDOL) or classifying the wage determinations in a manner that will minimize confusion or any "negative perception" that OIG believes may result when the public views such aged information on the website.

Recommendation 3: Consult with BLS and evaluate alternative methods to update wage rates such as the Consumer Price Index, and Occupational Employment Survey data.

Response: WHD agrees with this recommendation. As noted in OIG's report, WHD has met with the Bureau of Labor Statistics ("BLS") in the past to explore the use of Occupational Employment Statistics ("OES") survey data in support of the Davis-Bacon survey program. WHD believes it would at least need to engage in notice-and-comment rulemaking pursuant to the Administrative Procedure Act before it could simply adopt OES wage data. WHD will continue to maintain a relationship with federal partners, such as BLS and the Census Bureau ("Census"), for the purpose of periodically assessing whether it is legally permissible and programmatically appropriate to use OES or other data for purposes of improving the survey process.

As part of its efforts to reevaluate its contract services, WHD awarded a contract to support the Davis-Bacon wage survey program in late September of 2016 to Eastern Research Group ("ERG"), an organization with more than 30 years' experience providing economic and statistical analysis. WHD will continue to engage with this contract partner to provide WHD with objective feedback on its survey process, including the potential for using OES data or other alternative methods such as the Consumer Price Index ("CPI"), to inform the updating of wage rates under the Davis-Bacon survey program.

Recommendation 4: WHD should determine whether it would be statutorily permissible and programmatically appropriate to adopt state or local wage rates other than for highway construction.

Response: WHD agrees with this recommendation. WHD, in consultation with the Department of Labor ("DOL")'s Office of the Solicitor, will determine whether the Davis-Bacon Act presents any impediments to the agency's adoption of state or local wage rates outside the highway context. If deemed legally permissible, WHD will then consider whether it would be programmatically appropriate to seek regulatory changes permitting the adoption of such rates. WHD will discuss any such regulatory proposals with DOL leadership in the normal course of developing the agency's regulatory priorities and agenda.

Recommendation 5: Continue efforts to identify new strategies to increase contractors' participation in order to obtain more relevant wage data.

Response: WHD agrees with the recommendation and thanks OIG for acknowledging WHD's recent efforts to increase contractors' voluntary participation in the survey process. In the course of a typical survey, WHD makes multiple mailings and follow-up calls to interested parties and stakeholders. As OIG recognizes in its report, WHD has worked to increase participation by publishing press releases announcing surveys; conducting pre-survey briefings with international and local unions and contractors; conducting mid-survey briefings; contracting for services to promote participation; and creating an internet platform for interested parties to submit WD-10 wage reports electronically. WHD also announces its survey plans via All Agency Memoranda ("AAMs"), which contracting agencies and the general public can access on Wage Determinations OnLine (WDOL). WHD will continue these efforts and will work to identify additional strategies to increase contractors' participation, such as conducting additional outreach events and developing additional fact sheets and tools for stakeholders that communicate the importance of survey participation and best practices for submitting data to WHD.

Recommendation 6: Develop performance goals and measures to gauge and improve the quality of DBA prevailing wage rates, including the accuracy of information reported in WD-10s.

Response: WHD agrees with the recommendation. The quality of DBA wage determinations depends upon both participant response rates and the quality of data that participants submit to WHD through the WD-10 form. DBA wage determinations are inherently more useful to contracting parties and of a higher quality when they include more classifications and when they contain rates that are calculated at the county or group level rather than at a state level because such calculations more accurately reflect local conditions. WHD currently measures the percent of building, heavy, and residential wage classifications published at the county or group level. WHD will continue to set targets to improve agency performance on this measure. For the FY 2020 planning cycle, WHD will also develop additional qualitative milestones or quantitative measures to encourage further improvements in wage determination quality.

Recommendation 7: Validate the accuracy of documentation that supported the Painter/Spray wage rate for the Kansas Heavy Survey and if warranted take necessary actions to remove the job classification from applicable wage determinations. Likewise, apply these actions to other surveys in which the documentation was used.

Response: As OIG correctly recognizes, it is contrary to WHD policy to publish DBA wage rates based on data received from only one contractor. OIG's identification of a single instance in which WHD allegedly relied on wage data from only one contractor to publish a prevailing wage rate is still under review, and WHD therefore has not yet determined conclusively that its policy was not followed in this instance. If WHD concludes that an error in fact occurred, WHD will correct the isolated error promptly by removing the classification and wage rate at issue from all wage determinations on which they appear. WHD appreciates that OIG has alerted the agency to this potential error and will continue to review the matter carefully.

Recommendation 8: Seek regulatory changes if necessary for implementing any of these recommendations.

Response: WHD agrees in part with this recommendation. Specifically, to the extent that WHD has agreed with an OIG recommendation set forth in this report and determines that revisions to the DBA regulations are both necessary to effectuate that recommendation and programmatically appropriate, WHD will discuss any such regulatory proposals with DOL leadership in the normal course of developing the agency's regulatory priorities and agenda.

Thank you again for the opportunity to comment on this report.

Attachment

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Attachment

WHD SUPPLEMENTAL RESPONSE TO DRAFT OIG REPORT NO. 04-19-001-15-001, *BETTER STRATEGIES ARE NEEDED TO IMPROVE THE TIMELINESS AND ACCURACY OF DAVIS-BACON ACT PREVAILING WAGE RATES*

WHD appreciates the opportunity to review and respond to OIG's March 2019 draft audit report regarding the Davis-Bacon Act wage determination program. The following supplemental response provides clarification with respect to some of the findings and conclusions presented in OIG's report. Because OIG's audit reviewed the entire DBA wage determination program, the findings and conclusions set forth in the report address many different aspects of the program, ranging from the conducting of wage surveys to the calculating of wage rates to the publishing of wage determinations. To help place OIG's assertions and recommendations in context, WHD is also providing a brief overview of WHD's administration of the DBA wage determination program.

Overview of the Davis-Bacon Prevailing Wage Survey and Determination Process

General Principles: The Davis-Bacon Act requires the Secretary of Labor ("Secretary") to determine minimum wage and fringe benefit rates for laborers and mechanics employed on Federal contracts for construction, alteration, or repair of public buildings and public works. *See* 40 U.S.C. § 3142. These minimum wages are based on the wages that the Secretary "determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed." 40 U.S.C. § 3142(b). The Act's implementing regulations establish that the prevailing wage shall be the wage paid to the majority (greater than 50%) of the workers in the classification on similar projects in the area during the relevant period. *See* 29 C.F.R. § 1.2(a)(1). If the same wage is not paid to a majority of workers in the classification, then the prevailing wage is the weighted average wage rate. *Id.*

Conducting Wage Surveys: Davis-Bacon prevailing wage rates are derived from survey information that responding contractors and other interested parties voluntarily provide. *See* 29 C.F.R. §§ 1.1-1.7. WHD conducts Davis-Bacon prevailing wage surveys in accordance with the relevant guidelines established by the Government Accountability Office ("GAO") for compiling wage survey data and with WHD's own guidance published in its *Davis-Bacon Construction Wage Determinations Manual of Operations* (1986) ("*Manual of Operations*") and *Prevailing Wage Resource Book* (2015), *available at* https://www.dol.gov/whd/govcontracts/pwrb/toc.htm. In conducting wage surveys, WHD solicits and accepts information from all interested parties. *See* 29 C.F.R. § 1.3(a). WHD's long-standing procedures provide that "[w]hen a survey is started, national and local interested parties are notified of the survey, its boundaries, time frame, and cutoff date by letter." *Prevailing Wage Resource Book*, Tab 5 at 4. This survey notification letter to interested parties "requests their participation by facilitating the survey briefing process, encouraging contractors/members to participate in the survey . . . through the submission of wage data." *Id.* WHD also engages in follow-up requests for data, ensuring that a significant number of potential respondents have been contacted and provided an opportunity to participate in the survey process. *Id.* In conducting follow-up activities, WHD similarly applies its efforts

equally to the entire universe of non-respondents in order to avoid introducing statistical bias into the process.

Because participation in the wage surveys conducted under the Act is voluntary, WHD lacks authority to compel the submission of wage data. *See* 29 C.F.R. §§ 1.3(a), (c). If an entity fails to respond to the survey, its wage rates cannot be considered in determining the prevailing wage rate. The ARB has recognized that it "may be very difficult to discern the wage paid to every relevant laborer in the relevant labor pool," and that the regulations must be construed "to require that the Administrator make a reasonable effort and use reasonable discretion to identify the relevant laborers and ultimately publish a realistic prevailing wage." *In re Road Sprinkler Fitters Local Union No. 669*, ARB Case No. 10-123, 2012 WL 2673228, at *4 (ARB June 20, 2012).

Calculating Prevailing Wage Rates: In calculating wage rates based on the survey data received, WHD follows several important and well-established policies. First, in order for WHD to publish a wage rate for a classification, the data for that classification must generally meet certain sufficiency requirements. Currently, the survey data for a classification generally meets WHD's sufficiency requirement if it includes wage information for at least six similarly classified employees paid by at least three contractors. In narrow circumstances where WHD determines that the sample size of contractors and workers is sufficiently small that it is necessary to use a three-worker/two-contractor standard in order to ensure WHD can publish a survey rather than retain the prior, old survey rates, WHD will utilize that lower survey sufficiency standard. Second, in compiling data for residential and building wage determinations, WHD cannot use data from Federal or federally assisted projects "unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data." 29 C.F.R. § 1.3(d). Third, WHD adheres to the regulatory principle that the county is generally the appropriate geographic unit for data collection, although data may be derived from groups of counties in some situations, as described below. *See* 29 C.F.R. § 1.7(a), (b). Finally, data received from metropolitan and rural counties cannot be combined. *See* 29 C.F.R. § 1.7(b).[2]

In accordance with these principles, WHD first attempts to calculate a prevailing wage based on private project survey data at the county level. *See* 29 C.F.R. § 1.7(a); *Manual of Operations* at 38; *Chesapeake Housing*, 2013 WL 5872049, at *4.[3] If there is insufficient private survey data for a particular classification in that county, then WHD considers survey data from Federal

[2] If a county is located in a Metropolitan Statistical Area ("MSA") as designated by the Office of Management and Budget ("OMB"), then it is classified as a metropolitan county for purposes of the Act. *See In re Coalition for Chesapeake Housing Development*, ARB Case No. 12-010, 2013 WL 5872049, at *4 (ARB Sept. 25, 2013).

[3] This paragraph and the next describe the rate-setting process for building and residential construction wage determinations. The process for WHD's surveys of heavy and highway construction is identical except that WHD does not first attempt to use only private project survey data, but rather always considers such data in tandem with data for projects subject to DBA prevailing wage rates. *See* 29 C.F.R. § 1.3(d).

projects if such data is available. If the combined Federal and non-federal survey data received from a particular county is still insufficient to establish a prevailing wage rate for a classification, then data from surrounding counties may be used, provided that data from metropolitan and rural counties is not combined. *See* 29 C.F.R. § 1.7(b); *Manual of Operations* at 38-39; *Chesapeake Housing*, 2013 WL 5872049, at *7.

In considering survey data from surrounding counties, WHD first expands its calculation from the county alone to a group of counties. For metropolitan counties, WHD expands its calculation from the county to the other counties located in the same MSA, as determined by OMB. If private survey data from the established county group is still insufficient, then WHD will include Federal project data from all the counties in the group. If both private and Federal data for an established county group is still insufficient to determine a prevailing wage rate, then WHD may expand to a "supergroup" of counties or even to the statewide level. *See Chesapeake Housing*, 2013 WL 5872049, at *6 (concluding that "the use of wage data from a super group is a permissible exercise of the broad discretion granted the WHD under the statute and regulations" and that "even the use of statewide data is permissible"). WHD only expands data to these levels, however, for classifications that have been designated as "key" crafts. *See Prevailing Wage Resource Book,* Tab 5 at 6.

WHD's Response to OIG Audit Report

Executive Summary: As indicated by the title of its report, OIG makes a number of findings and recommendations regarding both the need to improve the "timeliness" of DBA prevailing wage rates and the need to improve the "accuracy" of these rates. WHD recognizes that DBA wage determinations must be as timely and accurate as possible in order for the agency to publish wage rates that are reflective of the rates that prevail in a designated area and that are useful to contracting parties. Accordingly, WHD appreciates many of the conclusions and recommendations set forth in OIG's report and will consider and, if appropriate, implement those suggestions as part of the agency's continued dedication to publishing high-quality, robust wage determinations in a timely manner.

As a threshold matter, however, WHD notes that a careful balancing is required to ensure that the goal of timeliness does not undermine the quality of DBA wage determinations. To that end, some of OIG's conclusions regarding the accuracy of DBA wage determinations may be in tension, if not outright conflict, with other OIG recommendations regarding the timeliness of such determinations. For example, OIG suggests on pp. 13-14 of its report that WHD should increasingly utilize the resource-intensive and time-consuming onsite verification process to reduce the number of errors that OIG believes may exist in the wage data collected by WHD. At the same time, however, OIG repeatedly urges WHD to more expeditiously conduct wage surveys and publish new determinations, *see, e.g.,* pp. 7-8. While both of these goals are laudable, it may be difficult to achieve both objectives, particularly with limited agency resources.

WHD responds to certain of the more specific assertions and conclusions reached by OIG for each of these two broad topics below:

OIG Findings and Conclusions Regarding the Timeliness of DBA Wage Determinations

- OIG Determination (p. 3 & passim): "In 2016, WHD reported to Congress that the time to complete wage surveys had decreased from an average of 5-7 years in 2002 to 2.4 years in 2015. This is consistent with our analysis that shows WHD took an average of 2.6 years to complete 9 of the 10 surveys we sampled (1 survey was cancelled)."

    - Response: WHD appreciates OIG's recognition that WHD has successfully reduced the amount of time it takes to complete a wage survey by more than 50% since 2002. As OIG correctly notes, WHD now strives to complete all DBA surveys within 21 months of the survey start date. WHD is pleased that OIG has acknowledged that the agency has made tremendous progress towards that ambitious 21-month goal, and WHD pledges to continue to strive towards greater survey efficiency going forward. WHD anticipates that future DBA prevailing wage surveys will satisfy this 21-month goal. Despite the agency's significant success in expediting the DBA wage survey process, WHD agrees with OIG's determination that the agency should continue to reduce the amount of time between the survey start date and the date that the wage determination is ultimately published. To this end, WHD will carefully consider the thoughtful suggestions that OIG has made to assist the agency in accomplishing this important programmatic objective while maintaining the quality of DBA wage determinations.

- OIG Determination (Table 1 on p. 5 & passim): Published DBA wage rates were as many as 40 years old.

    - Response: Although OIG accurately notes that certain published DBA wage rates are nearly 40 years old, OIG's report also correctly reflects that such aged wage rates are in fact exceedingly uncommon. As demonstrated by Table 1 on p. 5 of OIG's report, 94.37% of all published DBA wage rates are less than 10 years old.[4] Moreover, Table 1 reflects that only 0.56% of rates are more than 35 years old. When breaking the data down to "CBA" rates and "Open Shop" rates, OIG's own analysis shows that fully 99.39% of all CBA rates and 89.71% of all Open Shop rates are less than 10 years old.

      With respect to the relatively small number of wage rates reflected on OIG's Table 1 that are more than 10 years old, WHD notes that there are several reasons why such published aged rates may not have been updated. For example, some of those rates appear on specialty construction wage determinations, which are wage determinations issued for highly specialized types of construction such as oil well drilling. Such specialty construction wage determinations may have been issued

[4] WHD notes that OIG's Table 1 may slightly overstate the total number of "unique" published DBA wage rates because it appears that OIG may have duplicated certain rates based on the number of construction types listed on the relevant wage determinations, but such duplication does not materially affect the overall findings presented in the OIG report.

for specific construction projects that occurred in specific localities decades ago and are no longer in use. Perhaps even more notably, some of the aged wage determinations in OIG's calculation appear to apply only in sparsely populated, truly rural counties. Not only are such counties relatively unlikely to have extensive (or perhaps any) DBA-covered construction in any given period of time, but also the amount of construction in such counties may be sufficiently minimal that it could be exceedingly unlikely that WHD could conduct a DBA wage survey that would yield sufficient survey data to enable WHD to publish more current rates.

WHD agrees with OIG that DBA wage determinations must be as timely and accurate as possible. As part of its survey planning process, WHD will continue to consider the age of existing DBA wage rates in determining where to conduct DBA wage surveys. Moreover, as noted above, WHD intends to develop and implement a new strategy to identify DBA wage determinations that are more than 10 years old and unlikely to be in current use by contracting parties, such as some of the specialty construction wage determinations mentioned above. WHD will then adopt a new risk-based approach to managing such wage determinations, such as removing those wage determinations from Wage Determinations OnLine (WDOL) or classifying the wage determinations in a manner that will minimize confusion or any "negative perception" that OIG believes may result when the public views such aged information on the website.

- OIG Determination (p. 7): "Instead of performing 100 percent manual reviews, WHD could have considered other strategies, such as the use of statistical sampling or a risk-based approach that stratified WD-10s as high-medium-low risk based on past performance or other indicators that review is warranted."

    - Response: This assertion appears to assume that, if WHD conducts no manual review of the WD-10s it receives (other than a review of a sample based on a statistical or "risk-based" approach), WHD nonetheless will be able to determine from the face of each unreviewed WD-10 exactly what classification(s) it lists and the precise wages and fringe benefits paid to the workers in each such classification, without the need for any clarification or supplementation from the party that submitted the data. Such an assumption would be unwarranted and inconsistent with WHD's real-world experience, which reflects that, in the absence of clarification of the data received, a significant percentage of WD-10s would be unusable because it would be impossible to discern with complete confidence from the face of the WD-10 how the work should be classified or what specific rate was paid. This fact is reflected in WHD's 1986 *Manual of Operations*, which describes a number of critical purposes that are served through the clarification process, including that "[d]etermining the nature of work performed by various occupational classifications reported is an area that often needs clarification (particularly among laborers and equipment operators) and quantification of fringe benefits (particularly by open shop contractors) also generally requires some call-backs." *Manual of Operations* at 58. In addition,

even as to WD-10s that would be usable without any clarification, the clarification process can enable WHD to address issues with the submitted WD-10s that are not apparent from the face of those forms and thereby promotes the use of accurate, usable wage data.

OIG repeatedly emphasizes in its report that the voluntary nature of the DBA wage survey program is an obstacle to the collection of truly robust wage data and that WHD should seek to identify ways to increase the amount of wage data available to it. WHD notes that this important goal, however, is in tension with – and in fact would be undermined by – the use of statistical sampling because, without comprehensive (or at least extensive) clarification, WHD would be unable to use much of the wage data it receives.

For these reasons, WHD questions whether statistical sampling would be appropriate and whether it would be more efficient or effective than the clarification and verification that WHD currently performs. In our experience, the clarification process significantly improves the quality of the information received. Use of statistical sampling in lieu of comprehensive clarification could result in the publication of fewer, and less robust, wage determinations. At the same time, WHD appreciates and agrees with OIG's more general observation that a time-consuming, detailed review of every WD-10 form that is submitted may not be necessary, and WHD will continue to look for ways to streamline its review and clarification process.

- OIG Determination (p. 7 & passim): WHD could have used a variety of methods, such as utilizing rate escalators like the CPI, adopting OES data, and adopting state or local wage rates, to help publish nonunion wage rates in a more timely manner.

    - Response: As WHD has previously advised OIG, WHD believes that the DBA's implementing regulations do not allow WHD to utilize rate escalators like the CPI or to generally adopt OES wage data or wage rates determined by states or localities. WHD believes it would at least need to engage in notice-and-comment rulemaking pursuant to the Administrative Procedure Act before it could adopt any of these articulated proposals. Accordingly, to the extent that OIG suggests on p. 8 of its report that WHD could have used these alternative methods to help bring nonunion prevailing wage rates current in the Alaska and Kansas residential surveys, the utilization of such methods would not have been permissible for those surveys pursuant to the DBA's regulatory requirements.

      To the extent that WHD prospectively determines that regulatory changes would be both legally permissible and programmatically appropriate, WHD will discuss any such regulatory proposals with DOL leadership in the normal course of developing the agency's regulatory priorities and agenda. WHD has also pledged to continue to work with its federal partners, including the Bureau of Labor Statistics and the Census Bureau, to periodically assess whether it would be

appropriate and feasible to use OES or other data for purposes of improving the survey process.

OIG Findings and Conclusions Regarding the Accuracy of DBA Wage Determinations

- OIG Determination (p. 7): Contractors and other interested parties "submitted 38,225 WD-10 reports that WHD reviewed and clarified for usability by making phone calls."

  - Response: WHD appreciates OIG's recognition of its significant efforts to clarify and ensure the accuracy of the wage data submitted to the agency. Although OIG believes there may be alternate methods that the agency could utilize to expedite the survey process, as discussed above, WHD is pleased that the report acknowledges the agency's comprehensive efforts to ensure that DBA wage determinations are based on accurate and appropriately classified wage data.

- OIG Determination (pp. 11-12): "WHD stated that it had not defined the specific criteria that must be considered in order to justify using the [three worker/two contractor] standard. However, WHD used this standard for the Kansas Heavy Survey, and our review of craft reports showed that exactly 3 workers and 2 contractors were used to calculate the rates for two key job classifications – Truck Drivers (a union rate) and Crane Operators ($37.05) – in two metropolitan counties."

  - Response: As OIG correctly notes, for purposes of determining DBA prevailing wage rates, WHD utilizes a minimum survey sufficiency requirement for all surveys. In 2012, WHD decided to change the minimum craft sufficiency threshold from a 3-worker/2-contractor standard (3/2 standard) to a 6-worker/3-contractor standard (6/3 standard), except in narrow circumstances where WHD determines in its discretion that the sample size of contracts and workers is sufficiently small that it is necessary to continue to use the 3/2 standard in order to ensure that WHD would be able to publish a survey rather than retain the prior, old survey rates. For example, WHD generally only uses the 3/2 standard in rural areas and/or for particularly uncommon classifications.

    With respect to the Kansas Heavy Survey, WHD respectfully submits that it did indeed apply the above-specified criteria in order to justify using the 3/2 standard. Those criteria were satisfied with respect to the Kansas Heavy survey. Specifically, if WHD had applied the 6/3 standard to the Kansas Heavy survey, it would have negatively impacted WHD's ability to publish wage determinations as a result of the survey.

- OIG Determination (p. 14): The certified public accounting firm hired by WHD to conduct onsite verification reviews identified "832 errors" in the Verification Reports they prepared for six sampled surveys.

  - Response: As WHD has consistently informed OIG throughout this audit, OIG's reference to "832 errors" is inflated and misleading. The error figure is the result,

at least in part, of contractors inadvertently making an identical error(s) on multiple WD-10s that they submitted. In other words, a single error may affect all of a contractor's submissions, but rather than count the error once, OIG's calculation counts the same error each time it is repeated, making even a simple clerical error appear to be a widespread one.

- OIG Determination (pp. 14-15): Voluntary participation resulted in less wage data to calculate wage rates.

    - Response: WHD agrees with OIG that the voluntary nature of the DBA wage survey data collection process presents a challenge to WHD. WHD appreciates OIG's recognition that WHD has made significant efforts to increase survey participation rates. As OIG acknowledges, WHD has in recent years implemented a number of new innovative strategies to increase its chances of collecting enough wage data to ensure prevailing wage rates accurately reflect wages rates paid in a particular locality, including publishing press releases announcing the surveys; conducting pre-survey briefings with international and local unions and contractors; introducing mid-survey briefings, which, in at least one case, led to an influx of additional data; contracting for certain services to promote participation; and creating an internet-based platform for interested parties to submit WD-10 wage reports electronically. Although WHD cannot control the ultimate amount or quality of wage data submitted by interested parties, WHD is committed to utilizing its best efforts to ensure that any interested party who has potentially relevant wage data is aware of the survey and understands how it may be involved in the process.

- OIG Determination (p. 15): WHD "had no performance goals or measures that addressed the quality of prevailing wage rates for the DBA Wage Determinations Program."

    - Response: OIG's assertion could be construed to suggest that WHD had not sought in any way to measure the quality of the DBA wage determination process. The assertion thus overlooks WHD's considerable efforts to effectively gauge the substantive accuracy and usefulness of DBA wage determinations. In fact, over the past two years, WHD has considered a number of performance measures in order to replace the "average age" measure with other measurements of survey quality. Significantly, WHD has also established internal performance metrics to track office productivity, which has a direct impact on survey quality. WHD will continue to set targets to improve agency performance on this measure. For the FY 2020 planning cycle, WHD will also develop additional qualitative milestones and/or quantitative measures to encourage further improvements in wage determination quality.

- OIG Determination (p. 19): WHD "should develop a risk response for how it plans to handle the impact of wage rate reductions on DBA-covered workers and the reputation of the program."

- Response: OIG's suggestion that WHD should develop a risk-based response for handling situations in which the publication of wage rates at the county level may result in lower wage rates than currently published reflects a misunderstanding of how the DBA wage survey program operates. The risks identified or referred to by OIG are neither deficiencies nor problems capable of being solved by WHD; they are simply the consequences of conducting a prevailing wage survey program that comports with the DBA and its regulations. In the DBA context, WHD is tasked with determining the wage rate that prevails at a particular time in a specific locality for a particular job classification. Each prevailing wage determination replaces the prior determination, and the pre-existing published wage rates cannot be factored into the publication of new prevailing wage rates, even when the new survey may result in significant wage changes. Such is the reality of conducting DBA prevailing wage surveys; it is not a fault attributable to WHD's administration of the DBA program. Nor is that reality a new development for this statutory program that has existed for many decades.

  Moreover, OIG offers no meaningful evidence for its assertion that DBA wage rates will decline when subsequent surveys are conducted and published at the county level. DBA wage rates may increase, decrease, or remain constant when new surveys are conducted and rates are published at the county level; there is no reason to believe that wage rates will substantially drop in such circumstances. As noted above, the chance that a new published wage rate may substantially differ from the prior published wage rate will always be present in any DBA prevailing wage program that comports with the statute and regulations.

APPENDIX C: ACKNOWLEDGEMENTS

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