FOLLOW-UP REPORT

Office of Human Resources

Prevailing Wage Rate Determination Process

AUGUST 2021

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DENVER AUDITOR

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AUDITOR’S LETTER

August 5, 2021

In keeping with generally accepted government auditing standards and Auditor’s Office policy, as authorized by city ordinance, the Audit Services Division has a responsibility to monitor and follow up on recommendations to ensure city agencies address findings through appropriate corrective action and to aid us in planning future audits.

In our follow-up effort for the “Prevailing Wage Rate Determination Process” examination report completed by CliftonLarsonAllen and issued in September 2020, we determined the Office of Human Resources did not implement most of the recommendations it agreed to in the original examination report. Therefore, auditors determined the risks associated with the examination team’s initial findings have not been fully mitigated. As a result, the Audit Services Division may revisit these risk areas in future audits to ensure the city takes appropriate corrective action.

The Highlights page in this report provides background and summary information about the original examination and the completed follow-up effort. Following the Highlights page is a detailed implementation status update for each recommendation. We did not update the status of the one recommendation the Office of Human Resources disagreed with, as the office presumably would not have taken action toward implementing that. However, we include this recommendation in the status update section as a reference.

I would like to express our sincere appreciation to the personnel in the Office of Human Resources who assisted us throughout the examination and the follow-up process. For any questions, please feel free to contact me at 720-913-5000.

Denver Auditor’s Office

Timothy M. O’Brien, CPA
Auditor
Incorrect Update to the Prevailing Wage through Use of Service Contract Act Wage Determination

One of three updated job classifications that the examination team reviewed used an incorrect benefit rate.

Reorganization of Responsibility Governing the City and County of Denver’s Prevailing Wage Ordinance

The Office of Human Resources’ focus should be centered around recruiting and maintaining top professional talent.

Prevailing Wage Guideline Manual and Information Tracker

Human Resources’ policies and procedures governing the setting of prevailing wages did not address succession and turnover within the office nor did it address roles and responsibilities for modifying procedures for setting prevailing wages.

Prevailing Wage Establishment Process

- The Prevailing Wage Ordinance does not address procedures for the Career Service Board related to “determining the same method as used for those classes which are covered by the Davis-Bacon Act.”
- Certain classes of workers who fall under the Davis-Bacon Act have not received a wage adjustment for several years.
- The ordinance does not address workers’ right to appeal stagnant job wages when their wages are established by the Davis-Bacon Act.

WHY THIS MATTERS

Ensuring competitive and equitable prevailing wages helps the city hire and retain high-quality, skilled labor, which will also protects taxpayers’ investment in the City and County of Denver.

FULLY IMPLEMENTED | 0
PARTIALLY IMPLEMENTED | 2
NOT IMPLEMENTED | 1
DISAGREED; NO FOLLOW-UP | 1
Action Since Audit Report
Prevailing Wage Rate Determination Process

4 recommendations proposed in September 2020

The Office of Human Resources partially implemented two recommendations made in the original audit report. Two others have yet to be acted upon.

While the Office of Human Resources took action to ensure the rates used for setting prevailing wages were accurate, the process could still be improved by retaining supporting documentation of the review. However, by not fully implementing the recommendations it agreed to, the office failed to address the risks identified in the original examination.

Specifically:

- The office did not update the prevailing wage manual with the specific job titles of those responsible for changing Human Resources’ laws, rules, and regulations.
- The office did not evaluate the appropriateness of the Career Service Board’s role or the use of third-party surveys for determining prevailing wage rates for those classes not covered by the Davis-Bacon Act.
- The office did not clarify the methodology used for determining prevailing wages in the Prevailing Wage Ordinance.

Therefore, the ordinance remains unclear as to the appropriateness of third-party surveys and the methodology for setting prevailing wages. Inaccurate wage rates and a lack of defined roles and responsibilities for setting those wages could leave workers disadvantaged and possibly paid below market wages without an opportunity to appeal. Furthermore, without competitive rates, the city may be unable to hire and retain high-quality, skilled labor.
Finding 1 | Incorrect Update to the Prevailing Wage through Use of Service Contract Act Wage Determination

Recommendation 1

We recommend the City and County of Denver’s Office of Human Resources implement an additional review procedure to ensure the benefit rates used for setting prevailing wages are accurate based on the most recent Service Contract Act information.

As a result of the finding, the City and County of Denver’s Office of Human Resources has implemented additional controls and segregation of duties. This includes additional review over Service Contract Act changes. During the April 16, 2020, Career Service Board Meeting, the City and County of Denver’s Office of Human Resources presented the updated wages to the Career Service Board as a result of this finding. The Career Service Board approved the increase to the prevailing wage during this meeting. The City and County of Denver’s Office of Human Resources has taken corrective action and has taken the necessary changes to the Career Service Board.

AGENCY ACTION

Original target date for completion: July 31, 2020

The original examination noted that the Office of Human Resources implemented an additional review over changes related to the Service Contract Act.

As part of our follow-up efforts, we requested a list of reviews conducted since the completion of the original examination. Human Resources provided a tracking spreadsheet, which the office uses to monitor the reviews of prevailing wage classifications.

Of the 18 classification reviews Human Resources conducted since July 2020, we selected three and requested additional documentation from the office’s tracking spreadsheet. Human Resources personnel were unable to provide documentation of the additional review for these three selected classifications, but they did provide an email documenting the review of another classification not in our sample. Staff said they do not consistently keep documentation of the review other than the spreadsheet used to track information, including the individuals who performed the first and second reviews, the date the review was approved by the Career Service Board, and the effective date.

We also requested the office’s prevailing wage manual to determine whether the review process was documented. The manual outlined the office’s
processes for four types of wage updates: Davis-Bacon, Denver Metropolitan Area Survey, union collective bargaining agreement, and Service Contract Act. The manual did not include the review procedure for the Davis-Bacon updates. When we met with Human Resources management about the missing procedure, personnel made the changes during our meeting and provided us an updated manual.

The Office of Human Resources could better monitor wage reviews by keeping supporting documentation of the review in addition to the tracking spreadsheet. As a result, we determined this recommendation was partially implemented.
**Finding 2 | Reorganization of Responsibility Governing the City and County of Denver’s Prevailing Wage Ordinance**

**Recommendation 2**

The mission of the City and County of Denver’s Office of Human Resources is to attract, develop, and retain an engaged and high performing workforce that delivers on the City and County of Denver’s vision. The City and County of Denver’s Office of Human Resources’ main focus should be to maintain a competitive merit system that provides equal employment opportunity to all applicants for internal employees of the City and County of Denver, overseeing the City and County’s personnel system, and being dedicated to serving as strategic business partners with all agencies to source and recruit top professional talent for the City and County of Denver.

We recommend the City and County of Denver perform an evaluation as to whether the City and County of Denver’s Office of Human Resources is best suited for setting the prevailing wages for external job classifications. This evaluation should include: 1) Collection of input from current City and County of Denver Office of Human Resources employees centered around current procedures and job functions over the setting of the prevailing wage; 2) An analysis of other City and County of Denver departments in assessing whether other departments are performing similar job functions; and 3) A cost benefit analysis of utilizing an external organization for setting the prevailing wage, an example of which would be a compensation committee whose sole responsibility is the setting of prevailing wages under prevailing wage ordinance.

**AGENCY ACTION**

No action was taken to implement this recommendation because the agency disagreed with the recommendation made in the original report.

This was the agency’s response to the recommendation when the original report was issued in September 2020:

*First, it is recommended that CLA utilize language from City Charter and the Denver Revised Municipal Code to restate OHR’s role and responsibility in this section.*

*Second, although OHR agrees that we may not be the appropriate party to administer prevailing wage, we do not agree that OHR is the party responsible for determining who should more appropriately administer prevailing wage. OHR’s role in the prevailing wage setting is narrow: OHR only*
determines the appropriate wage for those classifications that are not available in Davis-Bacon.

All other prevailing wages are determined and posted by Davis-Bacon at their website and OHR simply identifies the appropriate job title and prevailing wage when updated by the Department of Labor. Any change to the current process will require a change in Denver’s municipal code (DRMC).

The City and County of Denver’s Office of Human Resources’ procedures and policies governing the setting of prevailing wage for the prevailing wage ordinance currently do not address: 1) Succession and turnover within the City and County of Denver’s Office of Human Resources; and 2) The roles and responsibilities for modifying the procedures utilized by the City and County of Denver’s Office of Human Resources in setting the prevailing wages for external job classifications.
Recommendation 3

We recommend the City and County of Denver’s Office of Human Resources prepare a formal prevailing wage guideline manual and information tracking document to be used for all aspects covering their responsibilities for setting the prevailing wage under the City and County of Denver’s Revised Municipal Code §20-76(c). The manual should outline each step in the prevailing wage process which would include:

1. Specific job titles of those employees who are responsible for modifications or changes to the current City and County of Denver’s Office of Human Resources laws, rules and regulations governing the City and County of Denver’s Revised Municipal Code §20-76(c). This will ensure the City and County of Denver’s manual is set up for succession and turnover within the City and County of Denver’s Office of Human Resources.

2. The manual should include documented dates of meetings with Union representatives or external parties covering the prevailing wage ordinance, including action steps taken and conclusions reached. This guideline manual should be a formal document and approved by the Career Service Board.

AGENCY ACTION

Original target date for completion: Sept. 30, 2020

Although the Office of Human Resources agreed with both parts of the recommendation, it did not include the job titles and responsibilities for changing Human Resources’ laws, rules, and regulations governing city ordinance, as recommended in the original report.

Human Resources staff said the specific responsibilities were not included because they were the Auditor’s Office’s responsibility. However, city ordinance specifically outlines these duties as being the responsibility of the Office of Human Resources and the Career Service Board.

We also reviewed the office’s manual and found Human Resources documented conversations it had with union representatives and external parties in March and April 2021. However, the manual was not approved by the board as recommended. Once we brought this to management’s attention, the office followed up with the Career Service Board, which then unanimously approved the document.
While the Office of Human Resources ultimately obtained board approval for the manual, the office did not implement the most important part of the recommendation: to establish the roles and responsibilities of those responsible for changing laws, rules, and regulations. Therefore, without that action to implement the recommendation, the risk is only partially mitigated.

As a result, we conclude this recommendation was partially implemented.
Finding 4 | Prevailing Wage Establishment Process

Recommendation 4

The City and County of Denver’s Career Service Board is to maintain the merit system and is responsible for setting policy, considering appeals, and making rule changes that enhance the work environment.

We recommend the City and County of Denver Office of Human Resources evaluate the current role of the Career Service Board under the City and County of Denver’s Revised Municipal Code §20-76(c) and work with the appropriate parties to determine if the Career Service Board’s or other existing/created Board’s authority be expanded to include the following:

1. The rates determined for classes not covered by the Davis-Bacon Act shall be determined using the same method as used for classes which are covered by the Davis-Bacon Act. As noted above, the City and County of Denver’s Office of Human Resources uses the Employers Council Compensation Survey Denver/Boulder geographic location. The City and County of Denver’s Office of Human Resources should work with the appropriate parties to determine the appropriateness of using a third-party survey. The Davis-Bacon Act prevailing wages are not established by a third-party compensation survey. The appropriate parties should work to clarify the ordinance of the methodology utilized for prevailing wages not covered by the Davis-Bacon Act.

2. Expanding the right to appeal job wages by third party individuals whose wage rate is established by the Davis-Bacon Act. The appeal would allow for a review over stagnant wages in the City and County of Denver and a course of action for modifying the prevailing wage to ensure competitive wages are paid to third-party individuals. The City and County of Denver’s Office of Human Resources should work with the appropriate parties to evaluate an expanded oversight Board to review stagnant wages that prevail under the Davis-Bacon Act.

AGENCY ACTION

Original target date for completion: Oct. 31, 2020

We asked Human Resources staff whether they worked with the relevant parties to determine the appropriateness of using a third-party survey. Human Resources personnel provided meeting minutes and a presentation from a meeting with the Career Service Board. They said they obtained
board approval in October 2020 to continue using the third-party surveys.

While the office obtained approval to use the third-party surveys, personnel did not provide evidence they evaluated the appropriateness of using these surveys, since wages established by the Davis-Bacon Act are not established by a third-party compensation survey.

The original report also noted city ordinance lacks clear procedures for and actions of the Career Service Board related to classes not covered by the Davis-Bacon Act. We asked Human Resources personnel whether they worked with the appropriate parties to clarify the ordinance, and they said an ordinance change was unnecessary because Human Resources uses the same methodology for classes not covered by Davis-Bacon. However, as discussed, the examination noted city ordinance’s vagueness regarding the methodology.

In addition, Human Resources staff said although the office is not conducting the surveys, the methodology used by their third party is administered by compensation professionals similar to U.S. Department of Labor surveys. However, the office provided no documentation to show it compared the methodologies to ensure they meet the city’s needs. Rather, Human Resources cited the difficulty in obtaining “proprietary methodologies” of a private firm.

We conducted our own high-level comparison of the methodologies and noted the Employers Council Compensation Survey uses compensation data only from human resources and finance professionals who are members of the Employers Council. The Department of Labor encourages and allows all contractors and other interested parties to take part in its survey process. While we did not evaluate whether the methodologies meet the city’s needs, the Office of Human Resources could perform a high-level review to ensure the surveys meet the city’s needs and are accurate in calculating prevailing wages.

Without clarifying the ordinance and without reviewing the methodologies of the surveys, the question remains whether the surveys are appropriate for meeting the city’s needs and ensuring prevailing wages not covered by the Davis-Bacon Act are accurately calculated.

Therefore, we consider this recommendation not implemented, because Human Resources did not implement the recommendation to clarify the methodology in the ordinance used for prevailing wages not covered by the Davis-Bacon Act.

Meanwhile, Human Resources took no action to implement the second part of the recommendation. The office disagreed with that part of the recommendation when the original report was issued in September 2020. This was the office’s complete response to the recommendation at that time:

1) OHR agrees to obtain guidance from the Career Service Board to ensure the Board agrees that a change in the current
process is warranted. If a third-party survey can be used to determine the prevailing wage for those classes not found in Davis-Bacon, and the Career Service Board concurs, OHR will work with the appropriate parties to propose a change to the ordinance.

Just to be clear, OHR is using the same survey methodology, but does not create, launch, collect, analyze and administer surveys as part of their responsibility. OHR utilizes regionally accepted external survey providers for compensation survey data. The DOL does not use a third-party survey source because they conduct their own surveys to determine the prevailing wage. When the wage is not in Davis-Bacon, OHR uses a regionally accepted third-party compensation survey that provides local market data on a variety of general industry occupations.

2) Disagree. OHR is not responsible for wages or updates to the wages that are determined by The Department of Labor’s Davis-Bacon Act. OHR also disagrees that we are responsible for reaching out to the Department of Labor if a wage hasn’t been updated in “x” number of years.

Per ordinance, OHR recommends prevailing wages only when the job classification is not available in Davis-Bacon, which is updated by the U.S. Department of Labor; OHR does not influence or direct these updates, or provide alternative recommendations to Davis-Bacon and has no role in the setting of Davis-Bacon wages. Per 20-76 (c), the role of OHR is to determine the appropriate base wage and fringes based on market data when the job classification is not available in Davis-Bacon. OHR does not classify, propose process changes, or make alternative recommendations to wages set by Davis-Bacon.

OHR finds that allowing any city contractor employee to appeal any prevailing wage determination from Davis-Bacon would be highly problematic. There is no language in ordinance that provides for appeals for prevailing wages that are proposed and approved by the Career Service Board. As mentioned above, most prevailing wages are taken from the DOL’s Davis-Bacon site. The Career Service Board only reviews those job classifications that are not covered by Davis-Bacon, which are very few in number.

OHR does not have the additional staff that would be required to review and recommend alternative prevailing wages for hundreds of Davis-Bacon rates. Per ordinance, OHR is first and foremost tasked with salary administration for City and County of Denver employees, not contractors. OHR lacks the operational and historical references to do so.
Additionally, OHR does not find that the Career Service Board should be able to consider arbitrary contractor requests for a different prevailing wage just because a contractor’s employee does not agree with the DOL prevailing wage.

OHR asked for guidance from CLA on two items and did not receive recommendations. Those two items are:

1. OHR asked CLA to provide guidance regarding OHR’s challenge of accepting union contracts (Collective Bargaining Agreements) for Custodians’ prevailing wage rates and a few other classifications.

OHR’s opinion is these unions should be required to submit their rates to the DOL to get into Service Contract Act, and their rates will prevail via that methodology, which we believe is the spirit of the ordinance.

Many years ago, under a different administration, OHR began accepting certain union contracts but not all. OHR would like CLA to provide a recommendation in this area because it will help ensure OHR’s wage determinations follow a consistent process.

2. OHR asked CLA to provide guidance regarding the ‘OHR’ Modification Document. This document is written and updated by the Auditor’s office. OHR does not own it, nor did we develop it.

In 2017, the Auditor’s Office directed OHR to put its name on the document. The Auditor’s Office has stated that Karen Niparko agreed that OHR would take it over during the last ordinance change because they wanted to make it clear that OHR “classifies” and they “enforce”, however, this is not the case, OHR only determines the wage when it is not able to be obtained by Davis-Bacon.

The Auditor’s Office enforces all prevailing wages and classifies work performed by employees of city contractors. There is no verbiage in the ordinance that refers to this document, nor is there anything that references who owns it. Therefore, OHR will remove its name from this document as it is not our document. OHR is no longer being involved with edits, processes, etc. relating to this document because we do not make these policy decisions, nor do we determine the content to be updated within the document.

The document and decisions made by the Auditor’s Office and reflects that it is owned by and within the scope of the Auditor’s Office’s Prevailing Wage Division.

For the original report, we wrote the following addendum rebutting this
agency's response:

Regarding Recommendation 4, we agree with the Office of Human Resources' assertions that:

• The Office of Human Resources, according to city ordinance, is not responsible for wages or updates to wages determined by the U.S. Department of Labor under the federal Davis-Bacon Act.

• The Office of Human Resources, according to city ordinance, is not responsible for reaching out to the U.S. Department of Labor if a wage has not been updated in a certain number of years.

• No language in the city's Prevailing Wage Ordinance provides for appeals of prevailing wage rates.

Although the Prevailing Wage Ordinance does not address these items, CliftonLarsonAllen did not recommend that the Office of Human Resources do these or other actions not required by the ordinance. Rather, in Recommendation 4, CliftonLarsonAllen recommended that Human Resources evaluate the role of the Career Service Board and work with appropriate parties to determine whether the Career Service Board, another existing board, or a new board would be best to expand the right to appeal job wages by third-party individuals whose wage rates are established by the Davis-Bacon Act.

The purpose of the appeal is to allow for a method of redress for stagnant wages under Davis-Bacon. There is nothing presented in the recommendation that the Office of Human Resources is not allowed to do according to city ordinance.

To evaluate the Career Service Board and expand the right to appeal job wages by third-party individuals subject to Davis-Bacon rates, the Office of Human Resources may work with:

• The Career Service Board.
• The City Council.
• The Mayor’s Office.
• Outside consultants.

This evaluation should likely result in finding that the ordinance needs to be changed to ensure the relevant prevailing wage rate sections have a method for addressing wages that may have become stagnant or may need to otherwise be adjusted for the City and County of Denver.
The charge of the Career Service Board is to “maintain the merit system, which is the foundation of the Career Service personnel system. It is responsible for setting policy, considering appeals, and making rule changes that enhance the work environment.” Without allowing a method of redress for wages that may not be appropriate for the City and County of Denver, the Career Service Board cannot fulfill its charge to set policy and make rule changes that enhance the work environment. Namely, the board cannot adjust stagnant or otherwise unfair wages.

A section of the city ordinance says: “The federal government, in implementing the Davis-Bacon Act possesses and exercises a superior capability ... to ascertain the basic rate of pay, overtime, and other benefits which accurately represent the current prevailing rate of wages for work.” While this may have been true when Denver’s ordinance was written, it may not be accurate now nor does that mean this conclusion should never be reevaluated.

Indeed, CliftonLarsonAllen found evidence in their work that certain classes of laborers, mechanics, and workers that fall under the Davis-Bacon Act have not received a wage adjustment in several years. For this reason, they recommend the Office of Human Resources evaluate the current role of the Career Service Board to determine whether it, an existing board, or even a new board could be used to review stagnant wages under Davis-Bacon and allow classes of laborers covered by this federal law access to an appeals process for stagnant wages.

Again, CliftonLarsonAllen did not make any recommendations to the Office of Human Resources that are not allowed under current city ordinance.

Lastly, in their response to the second part of Recommendation 4, Human Resources officials emphasized that they do not “classify” work performed by employees of city contractors, and they argue that Denver Labor within the Auditor’s Office classifies and enforces those wages. Human Resources claims to only “determine the wage when it is not able to be obtained by Davis-Bacon.” However, Human Resources arrived at this conclusion without doing the work presented in Recommendation 4: evaluating the role of the Career Service Board to determine whether it or another board could have expanded authority to oversee appeals of stagnant Davis-Bacon wages.

2 Denver Revised Municipal Code § 20-76(c)(2).
The Career Service Board outsources a regional survey to a third party to assess appropriate wages for the Denver metro area. Human Resources then copies and pastes this information, which constitutes Human Resources classifying the work. Arguably, Human Resources could be excluded from the process if the Career Service Board worked directly with that third party instead.

City ordinance does not require the Auditor’s Office to classify work. Rather, this duty lies with the Career Service Board, which oversees the Office of Human Resources. In addition, classification and enforcement work should be separated to guarantee a strong control environment to protect the rights of employees working for city contractors. As a result, which party owns what duty and process related to the “OHR Modification Document” still needs to be resolved.
Office of the Auditor

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