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Cover photo illustration by Denver Auditor’s Office staff.
The objective of our examination of the city's prevailing wage rate determination process was to determine the Office of Human Resources' compliance with:

- Its duties to set the city's prevailing wage;
- City ordinance and the office's duty to comply with the U.S. Department of Labor's processes in setting prevailing wage;
- Statutorily prescribed schedules for updating or amending set wages;
- Internal processes, policies, and standards; and
- Policies addressing conflicts, objections, and requests for hearings related to set or established prevailing wages.

CliftonLarsonAllen conducted this examination on behalf of the Auditor's Office. I am pleased to present the results of this examination.

By implementing recommendations for stronger controls to update prevailing wages, reorganize the responsibility of determining prevailing wages, better document policies and procedures governing the setting of prevailing wage, and refine and clarify the prevailing wage establishment process, the Office of Human Resources will be better equipped to ensure the city's prevailing wages are set and monitored properly and that a process exists to ensure wages remain competitive in the City and County of Denver.

This examination is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, “General Powers and Duties of Auditor.”

We extend our appreciation to the personnel in the Office of Human Resources who assisted and cooperated with us and CliftonLarsonAllen during the examination. For any questions, please feel free to contact me at 720-913-5000.

Denver Auditor's Office

Timothy M. O'Brien, CPA
Auditor
INDEPENDENT ACCOUNTANTS' REPORT

City and County of Denver, Denver Auditor's Office
Denver, Colorado

We have examined management of the City and County of Denver's Office of Human Resources' assertion that the Denver's Office of Human Resources complied with: 1) its duties to set the City of Denver's prevailing wage; 2) the City's Revised Municipal Code §20-76(c), especially its duty to comply with the federal department of labor's processes in setting the prevailing wage; 3) the City's statutorily prescribed schedules for updating or amending set wages; 4) the City's internal processes, policies and standards; and 5) the City's policies addressing conflicts, objections, and requests for hearings related to set or establish prevailing wages for the period of January 1, 2019 – December 31, 2019. The City and County of Denver’s Office of Human Resources’ management is responsible for its assertion. Our responsibility is to express an opinion on management’s assertion about the City and County of Denver’s Office of Human Resources’ compliance with the specified requirements based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether management’s assertion about compliance is fairly stated, in all material respects. An examination involves performing procedures to obtain evidence about whether management’s assertion is fairly stated, in all material respects. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of management’s assertion, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the City and County of Denver's Office of Human Resources' compliance with specified requirements.

In our opinion, management’s assertion that the City and County of Denver’s Office of Human Resources complied with: 1) its duties to set the City of Denver’s prevailing wage; 2) the City’s Revised Municipal Code §20-76(c), especially its duty to comply with the federal department of labor's processes in setting the prevailing wage; 3) the City’s statutorily prescribed schedules for updating or amending set wages; 4) the City's internal processes, policies and standards; and 5) the City’s policies addressing conflicts, objections, and requests for hearings related to set or establish prevailing wages, is fairly stated, in all material respects.

CliftonLarsonAllen LLP

Broomfield, Colorado
September 17, 2020
City and County of Denver, Denver Auditor’s Office  
Denver, Colorado

In planning and performing our examination of the City and County of Denver’s Office of Human Resources; compliance with: 1) its duties to set the City and County of Denver’s (the City and County) prevailing wage; 2) examine the City and County’s Revised Municipal Code §20-76(c), especially its duty to comply with the Federal Department of Labor’s processes in setting prevailing wage; 3) the City and County’s statutorily prescribed schedules for updating or amending set wages; 4) the City and County’s internal processes, policies, and standards; and 5) the City and County’s policies addressing conflicts, objections, and requests for hearings related to set or established prevailing wages for the period of January 1, 2019 – December 31, 2019, in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA) and Government Auditing Standards, we considered the City and County of Denver’s Office of Human Resources; internal control over the compliance (internal control) as a basis for designing examination procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the City and County of Denver’s Office of Human Resources; compliance, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we do not express an opinion on the effectiveness of the entity’s internal control.

During our examination we became aware of deficiencies in internal control and other compliance matters that are opportunities to strengthen your internal control and improve the efficiency of your operations. Our comments and suggestions regarding those matters are summarized below. This letter does not affect our report dated September 17, 2020 on the compliance of the City and County of Denver’s Office of Human Resources.

Introduction and Background

CliftonLarsonAllen LLP (“CLA”) was engaged by the Auditor to perform an examination of the City and County of Denver’s Office of Human Resources compliance with: 1) its duties to set the City and County’s prevailing wage; 2) examine the City and County’s Revised Municipal Code §20-76(c), especially its duty to comply with the Federal Department of Labor’s processes in setting prevailing wage; 3) the City and County’s internal processes, policies, and standards; and 5) the City and County’s policies addressing conflicts, objections, and requests for hearings related to set or established prevailing wages for the period of January 1, 2019 – December 31, 2019. As part of the deliverables, CLA presented an examination report to the Audit Committee.

Objective

The objectives of the examination were to review the following:

- The City and County of Denver’s Office of Human Resources compliance with the City and County’s Revised Municipal Code §20-76(c)
- The City and County of Denver’s Office of Human Resources procedures and processes in setting the prevailing wage within the City and County of Denver
- Whether the City and County of Denver’s Office of Human Resources complies with their duty and obligation to follow the Federal Department of Labor’s processes
**Scope**

The examination performed consisted of review and evaluation of:

- The City and County of Denver’s Revised Municipal Code §20-76(c).
- The City and County of Denver’s Office of Human Resources laws, rules, and regulations governing the prevailing wage ordinance and methodology for determining the prevailing wage.
- Collective Bargaining Agreements for the two largest job classifications (Custodians and Window Washers).
- The City and County of Denver’s Office of Human Resources compliance with the Service Contract Act of 1965, as Amended.
- The City and County of Denver’s Office of Human Resources compliance and procedures surrounding the federal wage standards or Davis Bacon.
- The City and County of Denver’s Office of Human Resources utilization of Denver Metropolitan Area Surveys in setting the prevailing wages.

**Methodology**

In performing the examination of the City and County of Denver’s Office of Human Resources’ compliance and internal controls associated with the subject matter as outlined above, the methodologies included the following:

- Inquiry of key personnel from the City and County of Denver’s Office of Human Resources, the City and County of Denver Auditor’s Office and Union representatives to obtain an understanding of the procedures, processes and conflicts associated with compliance of the City and County of Denver’s Revised Municipal Code §20-76(c).

- Review of the City and County of Denver’s Revised Municipal Code §20-76(c) and the laws, rules and regulations governing the prevailing wage ordinance and comparing the City and County’s ordinance to other municipalities who utilize a prevailing wage ordinance.

- Review of Collective Bargaining Agreements for the two job classifications whose prevailing wages fall under a Collective Bargaining Agreement. The two job classifications that utilize a Collective Bargaining Agreement within the City and County of Denver are Custodians and Window Washers.

- Selected for testing the two job classifications that have prevailing wages set by a Collective Bargaining Agreement. Testing over the two job classifications included: 1) Review of the City and County of Denver’s Office of Human Resources board report submitted to the Career Services Board outlining the proposed change to the prevailing wage rate; 2) Review over the Union’s proposed benefits and determining whether they were in compliance with the Collective Bargaining Agreement; 3) Review of the City and County of Denver’s Office of Human Resources calculation of the new prevailing wage rate in determining whether all Collective Bargaining Agreement language and required updates were applied; and 4) Review of the Career Services Board minutes in determining whether the new prevailing wage rate was approved.
The population utilized for job classifications that have wages set through: 1) Service Contract Labor Act; 2) Employer’s Council Compensation Survey; and 3) Davis Bacon as outlined below there were (222) individual job classifications. Using AICPA sampling guidance, the following selections were made:
  
  o Three job classifications were tested that have prevailing wages set through the Service Contract Labor Act. There were a total of twenty one (21) job classifications under this category.
  
  o Three job classifications were tested that have prevailing wages set through the use of a third-party survey such as the Employer’s Council Compensation Survey. There were a total of five (5) job classifications under this category.
  
  o Four job groupings were tested that have prevailing wages set through the Federal Department of Labor or Davis Bacon. The job groupings were building, heavy, highway and residential. There were a total of one hundred and ninety six (196) job classifications under the four (4) groupings. There were twenty two (22) revisions of the four job classifications made during the period under examination. We selected six (6) of those revisions for our testing.

- **Prevailing wages set through the Service Contract Labor Act:** If there is insufficient data available in the Denver metropolitan area to determine the rate of pay, overtime and other benefits or should comparable classes of work not be performed within the Denver Metropolitan area for each class of work covered, the City and County of Denver’s Office of Human Resources shall refer to the Service Contract Labor Act of 1965, as Amended to determine the rate of pay, overtime and other benefits. Testing over three classifications included: 1) Review of the City and County of Denver’s Office of Human Resources board report submitted to the Career Services Board outlining the proposed change to the prevailing wage rate; 2) Review over the City and County of Denver’s Office of Human Resources procedures and processes for obtaining the most recent Service Contract Act wage determination; 3) Review of the City and County of Denver’s Office of Human Resources calculation of the new prevailing wage rate in determining whether all required updates were applied; and 4) Review of the Career Services Board minutes in determining whether the new prevailing wage rate was approved.

- **Prevailing wages set through the use of a third-party survey such as the Employer Council Compensation Survey:** For job classifications which do not have a Collective Bargaining Agreement or are not covered by the Career Services Act, the City and County of Denver’s Office of Human Resources will utilize the Employer’s Council Compensation Survey in making updates to the prevailing wages. The City and County of Denver’s Office of Human Resources utilizes the weighted average of wages from Denver and Boulder in determining any update to the prevailing wage. Testing over three classifications included: 1) Review of the City and County of Denver’s Office of Human Resources board report submitted to the Career Services Board outlining the proposed change to the prevailing wage rate; 2) Review over the City and County of Denver’s Office of Human Resources procedures and processes for obtaining the most recent Employer’s Council Compensation Survey; 3) Review of the City and County of Denver’s Office of Human Resources calculation of the new prevailing wage rate in determining whether all required updates were applied; and 4) Review of the Career Services Board minutes in determining whether the new prevailing wage rate was approved.
• **Prevailing wages set through the Federal Department of Labor or Davis Bacon:** The City and County of Denver’s Office of Human Resources monitors and reviews the Federal Department of Labor for updates on a weekly basis. Testing over six classifications included: 1) Reviewing the City and County of Denver’s Office of Human Resources’ for verifying changes to the Davis Bacon prevailing wage; 2) Review correspondence sent to the City and County of Denver’s Auditor Office outlining change to the prevailing wage; and 3) Verify prevailing wage update was posted to the City and County of Denver’s Auditor’s Office website.

**Findings and Recommendations**

1. **Incorrect update to the prevailing wage through use of Service Contract Act wage determination**

   Through review of three job classifications out of twenty one that were updated through the Service Contract Act, we noted one instance where the prevailing wage update utilized a benefit rate of $4.48 per hour when the benefit rate should have been $4.54 per hour which resulted in an understatement of $0.06 per hour. This was a result of an out of date Service Contract Act wage determination being used. This rate discrepancy impacted a single job classification for a period of approximately four months, September 2019 – December 2019. Based on job description, error rate, and estimated full-time equivalent hours, questioned costs are less than $25,000.

   **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 Services 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 Services Board.

2. **Re-organization of responsibility governing the City and County of Denver’s prevailing wage ordinance**

   Through review of the current policies and procedures utilized in setting prevailing wages, review of the City and County of Denver’s prevailing wage ordinance and inquiry of individuals within the City and County of Denver’s Office of Human Resources, we identified that the City and County’s internal Office of Human Resources’ main focus should be centered around recruiting and maintaining top professional talent for the City and County of Denver.

   **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 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 Resource 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.

3. **Prevailing wage guideline manual and information tracker**

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 Services Board.

4. **Prevailing Wage Establishment Process**

The City and County of Denver’s Revised Municipal Code §20-76(c) requires that the Career Service Board sets forth the methodology for determining the prevailing wage as 1) using Davis-Bacon wages and if the work is not covered in Davis-Bacon, 2) conduct a Denver metropolitan area survey of the prevailing wage using the same methodology as Davis-Bacon, and 3) use the federal Service Contract Act wages when there is insufficient data in the Denver metropolitan area. It states:

*The city council hereby finds and concludes that the federal government, in implementing the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5), possesses and exercises a superior capability with superior resources to ascertain the basic rate of pay, overtime, and other benefits which accurately represent the current prevailing rate of wages for work covered by that federal law. The career service board shall determine that the prevailing wages applicable to the various classes of laborers, mechanic, and workers covered by this section and the Davis-Bacon Act correspond to the prevailing wage determinations made pursuant to that federal law as the same may be amended from time to time.*
It shall be the duty of the career service board to determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of work covered by this section but not be covered by the Davis-Bacon Act…Prior to making such determination, the career service board shall give reasonable public notice of the time and place of the hearing concerning such proposed determination and shall afford to all interested parties the right to appear before it and to present evidence. “Prevailing wages” shall mean, for each class of work covered by this section, but not covered by the Davis-Bacon Act, the rate of pay and the overtime and other benefits granted to such full-time workers in the Denver metropolitan area. The rates shall be determined using the same method as used for those classes which are covered by the Davis-Bacon Act. Should this method cause a reduction in compensation of any class of workers, the career service board will review the appropriateness of using this methodology and may recommend to city council a different method for establishing prevailing wage rates.

If there is insufficient data available in the Denver metropolitan area to determine the rate of pay and the overtime and other benefits or should comparable classes of work not be performed within the Denver metropolitan area for each class of work covered by this section and not covered by the Davis-Bacon Act, the career service board shall refer to the Service Contract Labor Act of 1965, as amended (41 U.S.C. § 351 et seq.) to determine the rate of pay and the overtime and other benefits.

The current ordinance does not currently address procedures and actions of the Career Service Board related to "determining the same method as used for those classes which are covered by the Davis-Bacon Act”. Currently, the City and County of Denver’s Office of Human Resources uses the Employers Council Compensation Survey Denver/Boulder geographic location to update prevailing wages not covered by the Davis-Bacon Act.

Also, there are certain classes of laborers, mechanics, and workers that fall under the Davis-Bacon Act in determining prevailing wage that have not received a wage adjustment over the past several years. The ordinance does not address a right to appeal job wages by third party individuals whose wages are established by the Davis-Bacon Act or the policy to govern and monitor stagnant wages.

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 Services Board’s or another 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.

**Conclusion**

During this examination, we observed internal control processes appearing to operate effectively throughout many of the City and County of Denver’s Office of Human Resources processes. By strengthening internal controls and implementing the recommendations provided, the City and County of Denver’s Office of Human Resources can more effectively monitor compliance with the City and County of Denver’s prevailing wage ordinance.

This communication is intended solely for the information and use of management of the City and County of Denver’s Office of Human Resources, the City and County of Denver’s Auditor’s Office, and others within the City and County of Denver, and is not intended to be, and should not be, used by anyone other than these specified parties.

CliftonLarsonAllen LLP

Broomfield, Colorado

September 17, 2020
July 31, 2020

Mr. Timothy M. O’Brien, CPA
City Auditor, City & County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. O’Brien,

CliftonLarsonAllen has conducted an examination of the Prevailing Wage Rate Determination Process.

This memorandum provides a written response for each reportable condition noted in the Auditor’s Report final draft that was sent to us on July 10, 2020. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1
Through review of three job classifications out of twenty-one that were updated through the Service Contract Act, we noted one instance where the prevailing wage update utilized a benefit rate of $4.48 per hour when the benefit rate should have been $4.54 per hour which resulted in an understatement of $0.06 per hour.

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 Services 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 Services Board.

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<th>Agree or Disagree with Recommendation</th>
<th>Target date to complete implementation activities (Generally expected within 60 to 90 days)</th>
<th>Name and phone number of specific point of contact for implementation</th>
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<tr>
<td>Agree</td>
<td>Completed</td>
<td>Alena Duran (720) 913-5726</td>
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Narrative for Recommendation 1

OHR recognized the value of an internal audit process and had implemented it prior to the CLA audit recommendation being brought to our attention. After each analysis, a different Senior Classification/Compensation Analyst audits the analysis, calculations, and Board report to ensure all are accurate.

AUDIT FINDING 2

Through review of the current policies and procedures utilized in setting prevailing wages, review of the City and County of Denver’s prevailing wage ordinance and inquiry of individuals within the City and County of Denver’s Office of Human Resources, we identified that the City and County’s internal Office of Human Resources’ main focus should be centered around recruiting and maintaining top professional talent for the City and County of Denver.

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<td>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 Resource 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.</td>
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<tr>
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<td></td>
<td>Alena Duran (720) 913-5726</td>
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Narrative for Recommendation 2

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 Services Board.

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<tr>
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<td>September 30, 2020</td>
<td>Alena Duran (720) 913-5726</td>
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**Narrative for Recommendation 3**

Agree, assuming it is concluded that the responsibility for prevailing wage administration remains with OHR. In the meantime, OHR Classification/Compensation will add a section to its existing Prevailing Wage process document to track and archive communications and meetings with external stakeholders regarding prevailing wage inquiries.

**AUDIT FINDING 4**

The current ordinance does not currently address procedures and actions of the Career Service Board related to “determining the same method as used for those classes which are covered by the Davis-
Bacon Act”. Currently, the City and County of Denver’s Office of Human Resources uses the Employers Council Compensation Survey Denver/Boulder geographic location to update prevailing wages not covered by the Davis-Bacon Act.

Also, there are certain classes of laborers, mechanics, and workers that fall under the Davis-Bacon Act in determining prevailing wage that have not received a wage adjustment over the past several years. The ordinance does not address a right to appeal job wages by third party individuals whose wages are established by the Davis-Bacon Act or the policy to govern and monitor stagnant wages.

**RECOMMENDATION 4**

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 Services Board’s or another 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.

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<tr>
<td>1) Agree</td>
<td>1) October 31, 2020</td>
<td>Alena Duran (720) 913-5726</td>
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<td>2) Disagree</td>
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**Narrative for Recommendation 4**

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.

If you have any questions, please contact Nicole de Gioia-Keane, Director of Classification & Compensation, at (720) 913-5643.

Sincerely,

Karen Niparko
Executive Director
Office of Human Resources

cc: Valerie Walling, CPA, Deputy Auditor
    Katja E. V. Freeman, MA, MELP, Audit Director
AUDITOR'S ADDENDUM

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

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accurately represent the current prevailing rate of wages for work.”² 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.

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.

² Denver Revised Municipal Code § 20-76(c)(2).
APPENDIX

Denver Prevailing Wage Ordinance

Selected portions of the Prevailing Wage Ordinance for Denver appear below. These portions are relevant to the discussion of information appearing in this report. To be more concise, portions irrelevant to this discussion are not included.

Sec. 20-76. - Payment of prevailing wages.

... 

(c) Determination of prevailing wages.

(1) The city council hereby declares that it is in the best interests of the city to have a uniform determination of the prevailing wages to be paid to the various classes of laborers, mechanics and workers which will be required in the performance of work covered by this section.

(2) The city council hereby finds and concludes that the federal government, in implementing the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5), possesses and exercises a superior capability with superior resources to ascertain the basic rate of pay, overtime, and other benefits which accurately represent the current prevailing rate of wages for work covered by that federal law. The career service board shall determine that the prevailing wages applicable to the various classes of laborers, mechanic, and workers covered by this section and the Davis-Bacon Act correspond to the prevailing wage determinations made pursuant to that federal law as the same may be amended from time to time. The board shall undertake to keep and maintain copies of prevailing wage determinations made pursuant to the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) and any amendments to that federal law. The board shall also keep and maintain such other information as shall come to its attention concerning wages paid in the Denver metropolitan area. The provisions of this section shall supersede any differing provisions of that federal law, except when that federal law is applicable independent of this section.

(3) It shall be the duty of the career service board to determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of work covered by this section but not be covered by the Davis-Bacon Act, which determinations shall be made at least annually, and as frequently as may be considered necessary by the career service board in order that the determination which is currently in effect shall accurately represent the current prevailing rates of wages. Prior to making such determination, the career service board shall give reasonable public notice of the time and place of the hearing concerning such proposed determination and shall afford to all interested parties the right to appear before it and to present evidence. "Prevailing wages" shall mean, for each class of work covered by this section, but not covered by the Davis-Bacon Act, the rate of pay and the overtime and other benefits granted to such full-time workers in the Denver metropolitan area. The rates shall be determined using the same method as used for those classes which are covered by the Davis-Bacon Act. Should this method cause a reduction in compensation of any class of workers, the career service board will review the appropriateness of using this methodology and may recommend to city council a different method for establishing prevailing wage rates.
If there is insufficient data available in the Denver metropolitan area to determine the rate of pay and
the overtime and other benefits or should comparable classes of work not be performed within the
Denver metropolitan area for each class of work covered by this section and not covered by the Davis-
Bacon Act, the career service board shall refer to the Service Contract Labor Act of 1965, as amended
(41 U.S.C. § 351 et seq.) to determine the rate of pay and the overtime and other benefits.

(4) The office of human resources shall issue clarifications or interpretations of the prevailing wage,
and shall provide the auditor any issued clarification or interpretation. If the auditor does not advise
the executive director of human resources in writing that it disagrees with any issued clarification
or interpretation within thirty (30) days, the clarification/interpretation shall be final. If the auditor
advises the executive director of human resources in writing that it disagrees with the clarification or
interpretation, then the auditor and the executive director of human resources shall meet to resolve
the conflict and, with approval of the career service board, the office of human resources shall issue a
final agreed upon clarification or interpretation, or may withdraw the clarification or interpretation, as
appropriate.

(d) Mandatory contract provisions; enforcement.

(1) Every contract covered by this section shall contain a provision requiring the contractor and every
subcontractor under such contract to pay every worker, mechanic and laborer employed under such
contract not less than the scale of wages as provided for under subsections (b) and (c).

(2) Such contract shall further require the contractor and subcontractors to pay all construction workers,
mechanics and other laborers at least once a week the full amounts of wages accrued at the time of
payment, computed at wage rates not less than those stated in the specifications; except that the
contractor and subcontractors shall make such payments to janitorial or custodial workers, and oil and
gas employees and contractors, at least biweekly.

(3) Every such contract shall further provide that the contractor shall post in a prominent and easily
accessible place at the site of the work the scale of wages to be paid by the contractor and all
subcontractors working under the contractor, and that complaints by third parties, including
employees of contractors and subcontractors, of violations may be submitted to the auditor, pursuant
to subsection (f).

(4) The contract shall further provide that if the contractor or any subcontractor shall fail to pay such
wages as are required by the contract, the manager of finance shall not approve a warrant or demand
for payment to the contractor until the contractor furnishes the auditor evidence satisfactory to the
auditor that such wages so required by the contract have been paid. Nothing herein shall preclude
the manager of finance from approving a partial warrant or demand for payment to the contractor
to the extent the auditor has been furnished evidence satisfactory to the auditor that one or more
subcontractors has paid such wages required by the contract, even if the contractor has not furnished
evidence that all of the subcontractors have paid wages as required by the contract. Any contractor or
subcontractor may utilize the following procedure in order to satisfy the requirements of this section:

a. The contractor or subcontractor may submit to the auditor, for each worker, mechanic or other
laborer to whom such wages are due, a check, as required by the auditor. Such check shall be
payable to that worker, mechanic or other laborer, or to the City and County of Denver so it is
negotiable by either of those parties. Each such check shall be in an amount representing the
difference between the accrued wages required to be paid to that worker, mechanic or other
laborer by the contract and the wages actually paid by the contractor or subcontractor.

b. If any check submitted pursuant to paragraph (4)a. of this subsection cannot be delivered to the worker, mechanic or other laborer within a reasonable period of time as determined by the auditor, then it shall be negotiated by the city and the proceeds deposited in the auditor's unclaimed prevailing wages special trust fund. Nothing in this subsection shall be construed to lessen the responsibility of the contractor or subcontractor to attempt to locate and pay any worker, mechanic or other laborer to whom wages are due.

c. Any valid, verified claim for prevailing wages that is actually received by the city through negotiation of any check submitted pursuant to paragraph (4)a. of this subsection must be made prior to two (2) years after the date of the last underpayment by the contractor or any subcontractor to the worker, mechanic or other laborer to whom such wages were due. After such date, the city shall no longer be liable for payment. The city, as trustee, shall pay such claimant only the amount of the check that is actually negotiated, regardless of any dispute as to any additional amount of wages owing to the worker, mechanic or other laborer. No interest shall be paid by the city on any funds received or disbursed pursuant to this subsection.

d. On the last working day of each month, the amount of any claim for which the city is no longer liable shall be credited to the general fund, except as otherwise required by law.

e. The auditor shall maintain a list of all unclaimed, city-negotiated prevailing wage checks for which the city is liable. Such list shall be updated monthly and shall be available for inspection at the office of the auditor.

(5) Every such contract shall further provide that the contractor shall furnish to the auditor each pay period during which work is in progress under the contract a true and correct electronically certified copy of the payroll records of all workers, laborers and mechanics employed under the contract, either by the contractor or subcontractors. Such payroll records shall include information showing the number of hours worked by each worker, laborer or mechanic employed under the contract, the hourly pay of such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll.

(6) Every such contract shall also require that the contractor will provide to the city a list of all subcontractors who will be providing any services under the contract.

(7) Every such contract shall further provide that if any laborer, worker or mechanic employed by the contractor or any subcontractor under the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the city may, by written notice to the contractor, suspend or terminate the contractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, and in the event of termination, may prosecute the work to completion by contract or otherwise, and the contractor and any sureties shall be liable to the city for any excess costs occasioned the city thereby.
The **Audit Committee** is chaired by the Auditor and consists of seven members. The Audit Committee assists the Auditor in his oversight responsibilities regarding the integrity of the City's finances and operations, including the reliability of the City's financial statements. The Audit Committee is structured in a manner that ensures the independent oversight of City operations, thereby enhancing citizen confidence and avoiding any appearance of a conflict of interest.

**Office of the Auditor**

The **Auditor** of the City and County of Denver is independently elected by the citizens of Denver. He is responsible for examining and evaluating the operations of City agencies and contractors for the purpose of ensuring the proper and efficient use of City resources. He also provides other audit services and information to City Council, the Mayor, and the public to improve all aspects of Denver's government.

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We deliver independent, transparent, and professional oversight in order to safeguard and improve the public's investment in the City of Denver. Our work is performed on behalf of everyone who cares about the City, including its residents, workers, and decision-makers.