



City of Phoenix

**Mission Statement**

To improve the quality of life in Phoenix through efficient delivery of outstanding public services.

**Project Team**

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**Project Number**

1230037

This report can be made available in alternate format upon request.

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## Citywide – Compliance with Davis-Bacon Act Grant Requirements

June 28, 2023

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### **Davis-Bacon Act Definition**

*The Davis-Bacon Act requires that all contractors and subcontractors performing construction work under federal contracts greater than \$2,000 pay their workers not less than the prevailing wage and benefits for the geographic location.*

### **Report Highlights**

#### **Contract and Wage Determination**

*Wage determinations were completed in Davis-Bacon contractual agreements, and were accessible to employees. However, Davis-Bacon procurements should be tracked.*

#### **Payroll Reporting and Accuracy**

*Certified payroll reports were mostly accurate, and wages were correct. However, statements of compliance should be monitored for accuracy and completeness.*

#### **Authorizations and Certifications**

*Apprentice certifications were documented, and restitutions were mostly accurate. However, payroll deduction and restitution controls could be strengthened.*

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## **Executive Summary**

### **Purpose**

Our purpose was to determine if City departments that receive Davis-Bacon grants, loans, loan guarantees, or insurance are compliant with The Department of Labor Code of Federal Regulations and Davis-Bacon Act requirements.

### **Background**

The Davis-Bacon Act requires that all contractors and subcontractors performing construction, alteration, and repair (including painting and decorating) work under federal or District of Columbia contracts more than \$2,000, pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. The U.S. Department of Labor (DOL) is responsible for determining prevailing wages, issuing Code of Federal Regulations (CFR) and standards to be observed by federal agencies that award or fund projects subject to Davis-Bacon labor standards, and for overseeing consistent enforcement of the Davis-Bacon labor standards. CFR Title 29 Parts 1, 3, and 5 are primarily used to provide the guidelines to City labor compliance staff for Davis-Bacon Act compliance.

The City funds projects subject to Davis-Bacon requirements and the Street Transportation Department (Streets) monitors Davis-Bacon compliance for all City departments, except for the Housing Department (Housing), which monitors its own projects. Streets primarily monitors capital improvement projects. Housing primarily monitors Housing and Urban Development (HUD) related projects for Davis-Bacon compliance.

### **Results in Brief**

**Wage determinations were documented and accessible to employees. However, Streets and Housing should document Davis-Bacon Act procurement processes to identify and track Davis-Bacon funding sources and projects.**

Streets and Housing ensured that wage determinations were negotiated and included in Davis-Bacon contracts. Additionally, Streets and Housing ensured wage determinations were posted in clear accessible locations at Davis-Bacon project sites. However, our findings determined that Streets and Housing do not have a documented process for the identifying and tracking of Davis-Bacon related projects.

**Streets and Housing certified payroll reports were mostly complete and accurate. However, statement of compliance reviews should be performed for accuracy and completeness.**

Controls were in place to ensure certified payroll reports documented the required criteria. Additionally, we reviewed certified payrolls to ensure prevailing wages were correct from May 2020 through May 2023. We concluded that all wages were accurate.

However, the statements of compliance were incomplete and inaccurate. Streets and Housing should establish and document procedures to perform quality control checks to ensure statements of compliance are complete and accurate.

**Overall, Streets and Housing had controls in place to ensure apprenticeship certifications were maintained and restitutions were accurate. However, Streets and Housing should strengthen payroll deduction authorization controls.**

Streets and Housing ensured that certifications for apprenticeships were adequately maintained for Davis-Bacon projects. Furthermore, Streets and Housing documented restitutions for the underpayment of wages, and confirmed that the correct payments were given. However, Streets and Housing should ensure that policies and procedures for the monitoring of payroll deduction authorization forms are implemented and adhered to.

## **Department Responses to Recommendations**

<b>Rec. 1.1:</b> Streets Transportation – Document policies and procedures for the procuring and tracking of Davis-Bacon related projects.	
<b>Response:</b> Street Transportation will document policies and procedures for the procurement and tracking of Davis-Bacon related projects.	<b><u>Target Date:</u></b> September 30, 2023
<b>Explanation, Target Date &gt; 90 Days:</b> [Type response here]	
<b>Rec. 1.2:</b> Housing – Document policies and procedures for the procuring and tracking of Davis-Bacon related projects	
<b>Response:</b> The Housing Department will document a policy and procedure for the procuring and tracking of department Davis-Bacon related projects within 90 days.	<b><u>Target Date:</u></b> September 13, 2023
<b>Explanation, Target Date &gt; 90 Days:</b> [Type response here]	
<b>Rec. 2.1:</b> Streets – Improve documented policies and procedures to include the performing of quality control checks for statements of compliance, payroll approval timeliness, and deduction authorization forms to ensure Davis-Bacon requirements are met.	
<b>Response:</b> Street Transportation will improve documented policies and procedures to include the performing of quality control checks for statements of compliance, payroll approval timeliness, and deduction authorization forms to ensure that Davis-Bacon requirements are met.	<b><u>Target Date:</u></b> September 30, 2023
<b>Explanation, Target Date &gt; 90 Days:</b> [Type response here]	
<b>Rec. 2.2:</b> Housing – Improve documented policies and procedures to include the performing of quality control checks for statements of compliance, payroll approval timeliness, and deduction authorization forms to ensure Davis-Bacon requirements are met.	
<b>Response:</b> The Housing Department will improve documented policies and procedures to include the performing of quality control checks for statements of compliance, payroll approval timeliness, and deduction authorization forms within 90 days.	<b><u>Target Date:</u></b> September 13, 2023
<b>Explanation, Target Date &gt; 90 Days:</b> [Type response here]	

# **1 – Contract and Wage Determination Compliance**

## **Background**

The Davis-Bacon Act requires that all contractors and subcontractors performing construction, alteration, and repair (including painting and decorating) work under federal or District of Columbia contracts more than \$2,000, pay their laborers and mechanics not less than the prevailing wage (the average wage paid to similarly employed workers) and fringe benefits for the geographic location.

CFR Title 29 Part 1 provides the regulations for: obtaining and compiling wage rate information and requesting wage determinations CFR Title 29 Part 5 provides the regulations for contract provisions and enforcement. Additionally, Streets and Housing created and implemented policies and procedures that align with CFR Title 29 Parts 1 and 5, and are used for the Davis-Bacon project procurement and wage determination processes.

We interviewed staff in multiple City departments to determine which departments managed federally funded contracts from Davis-Bacon Act related projects. We also analyzed City procurement processes for Davis-Bacon Act related projects. Furthermore, we conducted site visits and compliance interviews from May 2020 through May 2023 and verified that wage determinations were documented in contracts and were made accessible to employees at work sites.

## **Results**

**Overall, departments were able to identify most federally funded Davis-Bacon Act projects. However, processes to ensure that all Davis-Bacon projects are tracked and monitored for Davis-Bacon Act compliance are not well defined.**

We reviewed procurement processes related to Davis-Bacon Act compliance, interviewed subject matter experts, and attempted to verify Citywide federally funded contracts with Davis-Bacon requirements through the City's financial system (SAP). Our review concluded that Streets and Housing procure and monitor most of the Davis-Bacon projects; however, funding sources and cost centers associated with Davis-Bacon federally funded projects could not be easily identified in SAP. Davis-Bacon projects are not tracked by procurement; they are monitored by labor compliance staff. Streets procurement notifies a Streets labor compliance specialist when a Davis-Bacon project has been acquired, so the specialist can provide Davis-Bacon guidance and promote regulations. During our testing, we did not identify any contracts with Davis-Bacon requirements that were not monitored by the Streets and Housing Departments. However, a defined process or documented procedure is not in place for the identifying of federally funded Davis-Bacon projects at the procurement level.

Without a process in place to identify Davis-Bacon projects and contracts, the City cannot ensure they are being monitored and are complying with Davis-Bacon requirements, increasing the risk of non-compliance.

**Wage determinations were accurate and were included in contract specifications for contractors hired by the City for Davis-Bacon related projects.**

CFR Title 29 Part 1.6b requires the City to ensure that the appropriate wage determinations are incorporated in bid solicitations and contract specifications. Wage determinations cannot be modified after the contract award or after the beginning of construction. From May 2020 through May 2023, Streets monitored 72 contracts and Housing monitored 13 contracts. We reviewed and analyzed seven Streets contracts and five Housing contracts and verified that wage determinations were included in the contract specifications. Additionally, we confirmed the validity and accuracy of the contract wage decisions by obtaining wage determination replications from The Department of Labor and comparing them to the documented contract wage determinations. No exceptions noted

**Streets and Housing ensured wage determinations were posted in prominent locations and were accessible to contracted employees at work sites.**

CFR Title 29 Part 5 requires that wage determinations (which identify job classifications and wages rates) be posted by contractors and subcontractors at the work site. Additionally, the wage determination must be posted in a prominent and accessible location where it can be easily seen by contracted workers. Streets and Housing Labor Compliance staff conducted investigations, including employee interviews, to verify that wage determinations are posted at work sites. Furthermore, we performed live observations for three project sites (43<sup>rd</sup> Ave Traffic Signals, Park Lighting Improvements, and Harmony at the Park Two) and verified that wage determinations were posted in prominent locations at work sites and were accessible to contracted workers. No exceptions were noted.

**Streets and Housing ensured employee investigations were completed.**

CFR Title 25 Part 5.6 requires investigations of all contracts for the enforcement of Davis-Bacon compliance. Investigations must include confidential employee interviews, that will be used to examine payroll data, and provide evidence of registration and certification with respect to apprenticeships. Furthermore, interviews must be conducted to verify the accuracy of work classifications and fringe benefit plans. We obtained and reviewed standard operating procedures from Streets and Housing and verified that labor compliance staff had documented procedures to conduct employee interviews for contractors, interviewed labor compliance staff to determine the frequency of employee interviews, and observed live interviews. Employee investigations were completed as required by federal regulations; Streets and Housing had controls in place to meet this requirement.

## **Recommendations**

- 1.1 Street Transportation – Document policies and procedures to identify and monitor Davis-Bacon related projects.

- 1.2 Housing – Document policies and procedures to identify and monitor Davis-Bacon related projects.

## **2 – Certified Payroll Reporting and Accuracy**

### **Background**

CFR Title 29 Part 5.5 requires all laborers and mechanics employed or working on the site of work to be paid the minimum wage rate prescribed in the contract. Part 5.6 requires the City to enforce contractor compliance. Streets and Housing created and implemented policies and procedures that align with CFR Title 29 Parts 3 and 5, and that are used for the monitoring of certified payroll reports. Staff use the Labor Compliance Program Tracker software (LCP Tracker) to ensure wages and payroll reports are accurate. Additionally, LCP Tracker is used to verify that payroll reports are submitted timely and have a documented statement of compliance.

We reviewed certified payroll reports from May 2020 through May 2023 to ensure that wages were accurate and aligned with wage decisions, and that payroll reports were complete and featured the required regulation criteria. Furthermore, we verified that certified payroll reports were submitted weekly, and that statements of compliance were documented and completed by authorized signers.

### **Results**

#### **Streets and Housing had controls in place to ensure employees were not paid less than the prevailing wage.**

We interviewed Streets and Housing labor compliance staff to determine how wages are monitored for classification and accuracy. Streets and Housing staff rely on compliance interviews and LCP Tracker system validations to ensure wages are accurate. We reviewed and reconciled 66 Streets and 16 Housing certified payroll reports to determine that all wages were accurate and that no instances of pay less than the prevailing wage occurred. No exceptions were noted.

#### **Streets and Housing had controls in place to ensure certified payroll reports had the required Davis-Bacon Act criteria.**

CFR Title 29 Part 3.4b requires certified payroll reports to document the following: name, address, classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid accurately and completely. Streets and Housing rely on system validation controls in LCP Tracker and on the review of certified payroll reports by Labor Compliance staff to confirm reports are accurate. We reviewed 17 Streets and 51 Housing payroll reports and noted that all certified payroll reports contained the required criteria. Payroll report accuracy ensures the appropriate contractor can be identified for any disciplinary action and ensures employees are correctly paid for work performed. No exceptions were noted.



**Overall, Streets had adequate controls over the timely submission and processing of certified payroll reports. Housing should strengthen controls related to the monitoring and timely approval of certified payroll reports.**

CFR Title 29 Part 3.4 requires the weekly certified payroll to be provided to the City within seven days after the regular payment date of the payroll period. We interviewed Streets and Housing staff to determine how payrolls are monitored for timeliness, what course of action is taken for late certified payroll reports, and how often payrolls are reviewed and accepted by labor compliance staff. Streets and Housing rely on contractors to submit certified payrolls through LCP Tracker. The payrolls are then reviewed by labor compliance staff who are alerted by system notifications when payrolls exceed deadlines. Streets and Housing indicated that the approving of payroll often exceeds the weekly timeframe requirement.

We obtained a report from LCP Tracker of late certified payrolls from selected contractors. Initially, there were 741 outstanding payrolls for Streets and 1,931 for Housing. We reconciled payrolls and determined that most payrolls were not late or missing, but had a delayed start time which was not captured in the reporting. For Streets, seven payrolls were not submitted; the most delayed payroll exceeded 440 days. For Housing, 88 payrolls were not submitted; the most delayed payroll exceeded 1,047 days. Missing payrolls were linked to insufficient monitoring controls and staff changes. Streets and Housing could strengthen controls related to the timely approval of certified payrolls to ensure employees are paid correctly.

**Statements of compliance were documented with certified payroll reports. However, Streets and Housing should strengthen controls related to the accuracy and completeness of statements of compliance and labor standard certification forms.**

CFR Title 29 Part 3.3b requires that a statement of compliance be submitted with each weekly certified payroll report. The statement of compliance must be executed by the contractor, subcontractor, or authorized officer who supervises the payment of wages. The statement verifies that all information identified on the certified payroll report is accurate and valid, and is used to identify any contractors responsible for the underpayment of wages.

Streets and Housing use labor standard certification forms to identify and verify the authorized person that supervises the payment of wages. Labor compliance staff verify the validity of the statement of compliance during payroll report reviews. We selected two projects each from Streets and Housing, analyzed 20 labor standard certification forms for the contractors that performed work on the projects, and verified that 23 certified payroll reports contained a statement of compliance by the documented authorized officer. Three Housing and two Streets payroll reports that were submitted were not completed by the authorized officer. Additionally, we noted seven Streets labor standard certification forms that were not verified and signed by labor compliance staff. Streets and Housing should improve and document policies and processes related to the verification of statements of compliance, and perform routine inspections to ensure authorized signers are current.

## **Recommendations**

- 2.1 Street Transportation – Improve documented policies and procedures to include the performing of quality control checks for statements of compliance, payroll approval timeliness, and deduction authorization forms to ensure Davis-Bacon requirements are met.
- 2.2 Housing – Improve documented policies and procedures to include the performing of quality control checks for statements of compliance, payroll approval timeliness, and deduction authorization forms to ensure Davis-Bacon requirements are met.

### **3 – Authorizations and Certifications**

#### **Background**

CFR requires documented employee acknowledgement of (1) payroll deductions, (2) apprentice certifications, and (3) instances of restitution. Streets and Housing created and implemented policies and procedures that align with CFR Title 29 Parts 3 and 5, are used for the monitoring of certified payroll reports. We reviewed deduction authorization forms, apprenticeship certifications, and restitutions from May 2020 through May 2023 to ensure payroll deductions were monitored to prevent kickbacks. Furthermore, we reviewed apprenticeship records to ensure certifications were documented. We also reviewed restitutions to ensure they were documented, accurate, and were acknowledged by employees.

#### **Results**

**Most employees had documented deduction authorization forms. However, Streets and Housings should strengthen controls related to deduction authorization monitoring to reduce the risk of kickbacks.**

CFR Title 29 Part 3 prohibits employers from requiring employees to “kick-back” or give up any of their earnings. Allowable deductions include employee obligations from income taxes, social security payments, insurance premiums, retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Certified payroll reports highlight deductions for federal tax, social security, Medicare, state tax, local taxes, and savings. Deductions belonging to other classifications are documented separately on certified payroll reports.

Streets and Housing implemented deduction authorization forms to document deductions belonging to the other classifications and reduce the risk of kickbacks. We reviewed and analyzed 165 certified payroll reports and reviewed deduction authorization forms for 13 employees with other deduction classifications. Deduction authorization forms were maintained for 9 out of 13 employees. Payroll deductions must be authorized by the employee to ensure the employees are aware of the deduction and to reduce risks related to kickbacks.

**Streets and Housing had controls in place to ensure certifications were maintained for apprentice and trainee employees.**

CFR Title 29 5.5.4 requires apprentices that complete Davis-Bacon projects to be registered in an apprenticeship program registered with the DOL and to not be paid less than the prevailing wage outlined in the wage determination for the apprenticeship role. Streets and Housing rely on contractors to acknowledge and provide apprenticeship certifications. Certifications are monitored by Streets and Housing Departments, and wages are monitored to ensure apprentices are not paid less than the prevailing rate. We obtained a list of apprentices that work on various Davis-Bacon projects from LCP Tracker and verified that certifications were documented for the selected apprentice,

and wages were accurate for the type of work performed. Our review determined that certifications were adequately maintained for apprentices, and that wages were accurate, and reflected wage determinations.

**Restitutions were documented and accurate for the underpayment of wages.**

CFR Title 29 Part 5.8 provides the course of action for liquidated damages and causes for restitution. Restitution guarantees that in the event a laborer or mechanic is paid less than the prevailing wage, the contractor or subcontractor will be held liable for the unpaid wages. Streets and Housing Departments rely on labor compliance staff for payroll reviews, and interviews to ensure employees are paid correctly. If an employee discloses, is misclassified, or is identified from the compliance interview as being underpaid, labor compliance staff and the employee must document and acknowledge the underpayment and make the correction. We reviewed four Streets documented instances of restitutions and ensured restitutions were paid and documented accurately. Housing did not have any instances of documented restitutions. No exceptions were noted.

**Recommendations**

None

## **Scope, Methods, and Standards**

### **Scope**

We performed our testing and review based on The Department of Labor Federal Code of Regulations Parts 1, 3, and 5. Our testing included documented contracts and wage determinations, live site visits, certified payroll reports, apprentice certifications, and documented restitutions from May 2020 through May 2023.

The internal control components and underlying principles that are significant to the audit objectives are:

- Control Environment
  - The oversight body and management should demonstrate a commitment to integrity and ethical values.
  - The oversight body should oversee the entity's internal control system.
  - Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objective.
  - Management should evaluate performance and hold individuals accountable for their internal control responsibilities.
- Control Activities
  - Management should design control activities to achieve objectives and respond to risks.
- Monitoring Activities
  - Management should establish and operate monitoring activities to monitor their internal control system and evaluate the results.

### **Methods**

We used the following methods to complete this audit:

- We obtained and analyzed Davis-Bacon related City contracts and wage decisions.
- We obtained and analyzed training policies and procedures.
- We observed Davis-Bacon project sites and compliance interviews.
- We reviewed and analyzed certified payroll reports for accuracy and completeness.
- We reviewed and analyzed apprentice certifications.
- We reviewed and analyzed deduction authorization forms.
- We reviewed and analyzed documented restitutions.

Unless otherwise stated in the report, all sampling in this audit was conducted using a judgmental methodology to maximize efficiency based on auditor knowledge of the population being tested. As such, sample results cannot be extrapolated to the entire population and are limited to a discussion of only those items reviewed.

## **Data Reliability**

We assessed the reliability of LCP Tracker data by (1) performing electronic testing, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that these data were sufficiently reliable for the purposes of this audit.

## **Standards**

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. Any deficiencies in internal controls deemed to be insignificant to the audit objectives but that warranted the attention of those charged with governance were delivered in a separate memo. We are independent per the generally accepted government auditing requirements for internal auditors.