



The Department of General Services Needs Guidance and Assistance to Develop Effective Internal Controls

July 17, 2017

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The Department of General Services Needs Guidance and Assistance to Develop Effective Internal Controls

Why ODCA Did This Audit

The Office of the District of Columbia Auditor (ODCA) is mandated by D.C. Code §38-2973.05 to prepare an annual report on the use of capital funds by the District of Columbia's Public Schools (DCPS). The Department of General Services (DGS) is tasked with managing the capital improvement and construction program for District government facilities, which includes the modernization or new construction of District schools. In FY 2014, ODCA renewed its commitment to audit the District of Columbia's public school modernization program on an annual basis. This is the fifth ODCA report describing the state of the program and includes our recommendations for improvement.

What ODCA Found

In both FY 2014 and FY 2015, ODCA identified a number of internal control deficiencies in the District's school modernization program. ODCA's FY 2016 audit of the District's school modernization program can be summarized as follows:

- DGS did not demonstrate that it has a process in place to verify the accuracy of invoices prior to approval for payment.
- DGS did not have an effective process for closing out school modernization projects.
- DGS could not demonstrate that it had an effective process for transferring custody of school modernization projects to its Facilities Management Division.
- DGS does not have sufficient processes in place to prevent, detect and/or correct violations of the Davis-Bacon Act.
- The District is not monitoring the status of Davis-Bacon Act complaints filed by workers on its school modernization projects to ensure that contractors are paying appropriate wages and benefits.

For more information, please contact Diane Shinn, at diane.shinn@dc.gov or 202-727-3600.

What ODCA Recommends

1. The Mayor of the District of Columbia should ensure that DGS has the guidance and technical assistance necessary to properly design and implement effective internal controls.
2. DGS needs to design, document and implement effective controls for the review and approval of invoices for its school modernization projects.
3. DGS should finish the design and implementation of a process for verifying that each school modernization project is properly closed out.
4. DGS should finish the design and implementation of a process for verifying that custody of each school modernization project is properly transferred between the construction division and the facilities division.
5. DGS should ensure that processes used to detect Davis-Bacon Act violations are properly designed and implemented, including the retention of sufficient appropriate documentation to facilitate ODCA's review of the operating effectiveness of the processes.
6. The D.C. Council should conduct a fact-finding oversight hearing, and draft and enact a local law providing implementation guidelines for the District's compliance with and enforcement of the Davis-Bacon Act, including specific responsibility for receiving and following up on complaints that are currently forwarded to DOL. At a minimum, a D.C. government agency should have explicit authority, responsibility, and funding to ensure that any prevailing wage law violations result in appropriate action by D.C. agencies, including debarment of a contractor.

Table of Contents

Background	1
Objectives, Scope and Methodology	3
Audit Results.....	4
Audit Results Summary	18
Conclusion	20
Agency Comments.....	22
ODCA Response to Agency Comments	23

Background

The Office of the District of Columbia Auditor (ODCA) is mandated by D.C. Code §38-2973.05 to prepare an annual report to the public on the use of capital funds by the District of Columbia's Public Schools (DCPS). The Department of General Services (DGS) is tasked with managing the capital improvement and construction program for District government facilities, which includes the modernization or new construction of District schools.

In FY 2014, ODCA renewed its commitment to audit the District of Columbia's public school modernization program on an annual basis. This is the fifth ODCA report describing the state of the program and includes our recommendations to improve it. Below are the findings from the prior two fiscal years.

Findings from FY 2014

- In a number of instances, the District's program did not comply with explicit requirements specified by District law, including the following:
 - The District could not demonstrate that schools were selected for modernization in accordance with a plan.
 - Funding provisions for the program, as specified by law, were disregarded.
 - The Capital Improvement Plan (CIP) for the District omitted important information about the future of the program.
- DGS often lacked the documentation necessary to support its processes and decisions. In addition, DGS failed to collect deliverables required by its contracts, could not always substantiate the accuracy of the invoices that it paid, and ODCA struggled to verify the total cost to modernize each school. In fact, ODCA found the internal control environment so deficient that it identified it as an impediment to its review of the District's school modernization program.

Findings from FY 2015

ODCA looked at two schools included in the District's school modernization program, examining the type of contract used for H.D. Cooke Elementary School and the process by which The Duke Ellington School of the Arts is being modernized.

ODCA's review of the Cooke modernization found that the scope of work and the structure of the contract were altered, without explanation, and that these changes may have cost the District \$500,000.

The review of the Duke Ellington project also identified a number of internal control failures, including:

- ODCA found the DGS Procedure and Delivery Manual used for the project to be contradictory and vague.
- DGS proposed the project for inclusion in the FY 2012 CIP before it had finalized requirements for the school.
- Neither the cost to complete the project, nor the timing of its completion were updated in the CIP as the project progressed.
- DGS failed to require its contractors to comply with the contractual obligations included in their contracts.

The Audit Results section of this report will present ODCA's findings for FY 2016. We summarize our FY 2014 and FY 2015 findings above because a review of the findings included in the FY 2016 report should be accompanied by a careful examination of the totality of evidence gathered by ODCA over the last three fiscal years. In the Conclusion section of this report we share ODCA's belief that addressing DGS's persistent internal control failures will require serious attention beyond the agency itself and a commitment to reforms that are systemic and potentially government-wide.

We would like to thank the following individuals and organizations for assisting us in gathering information about the Davis-Bacon Act: Kurk Brungard, Foundation for Fair Contracting; John Collins, International Brotherhood of Electrical Workers Local Union #26; Stephen W. Courtien, Community Hub for Opportunities in Construction Employment; John L. Monroe, Foundation for Fair Contracting.

Objectives, Scope and Methodology

Objectives

The objectives of the FY 2016 school modernization project audit are to:

- Review and assess processes employed by DGS during the construction phase of a school modernization project, including compliance with the Davis-Bacon Act and the agency's process for the approval and payment of invoices.
- Review and assess processes employed by DGS during the closeout/turnover phase of a school modernization project, including the satisfactory completion of all inspections and certifications.

Scope

The period under audit is FY 2016, or October 1, 2015, through September 30, 2016.

Methodology

To accomplish our audit objectives, we interviewed staff and reviewed applicable laws, DGS policy and procedure manuals, and supporting documentation. We also did the following:

- Examined processes designed to achieve compliance with the Davis-Bacon Act, which requires contractors to pay "prevailing wage rates" on all federal government and District construction projects in excess of \$2,000.
- Reviewed DGS's process for the review and approval of invoices.
- Tested DGS processes for closeout and transfer of school modernization projects between the construction division that builds each school and the facilities division that maintains each school.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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.

Audit Results

DGS was unable to provide documentation in a timely manner, which made it difficult, and in some cases impossible, to draw conclusions about its processes.

The GAO's Standards for Internal Control in the Federal Government (the "Green Book") specifically identify the following requirement for an organization's control activities, or processes:

*"Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be **readily available for examination**. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained." (Emphasis added.)*

DGS struggled to provide the documentation ODCA needed to conduct this audit in a timely fashion. On average, it took DGS 17 days to provide documentation once ODCA requested it. The time that it took between ODCA's requests for information and the actual receipt of that information was so long that ODCA could not always test DGS processes, as the length of time required for DGS to provide ODCA with information compromised its reliability. For example, on Oct. 12, 2016, ODCA requested nine invoices from DGS, representing payments made to contractors for three separate school modernization projects. These items were not delivered until Nov. 10, 2016, or some 29 days later.

The documentation necessary to verify that DGS processes were operating effectively was not readily available because DGS does not have an effective system of internal control that meets the criteria outlined in the Green Book. DGS's lack of sufficient internal controls has been noted by ODCA in several reports over the past several years, with findings identified over a substantial cross section of DGS operations. This leads us to believe that it is a systemic problem that requires the intervention of the Executive Office of the Mayor (EOM) to provide the guidance and technical assistance necessary for DGS to properly implement effective internal controls.

The length of time that it took for DGS to provide ODCA with the documentation needed for this audit made it difficult, and in some cases impossible, to draw any conclusions about DGS processes, as doing so could have raised the audit risk associated with our conclusions to an unacceptably high level.

Audit risk, as defined by GAGAS, is the possibility that the auditor's findings, conclusions, or recommendations may be improper or incomplete for any of a variety of reasons, including:

- Evidence that is not sufficient and/or appropriate.
- An inadequate audit process.
- Intentional omissions or misleading information due to misrepresentation or fraud.

When an auditor requests documentation from an organization, which should be immediately retrievable, and instead receives this documentation 29 days later, the auditor should be skeptical about why it took so long. The likelihood that items were altered before they were given to ODCA, or even generated for the very first time, increases significantly. ODCA does not have any evidence that such steps have occurred, but these are the types of concerns that an auditor must consider as audit risk increases.

Auditors typically select a sample of transactions or processes to review because reviewing each and every item consumes far too much in resources and yields little additional value. By reviewing a sample, the auditor can then confidently conclude that a process is operating effectively. However, this approach does require the auditor to verify that evidentiary documentation for the sample is readily available and that the process was executed at the time the event occurred. Otherwise we face the risk of incorrectly concluding that the process is operating effectively when, in fact, it is not.

Moreover, our experience suggests that DGS managers do not have the ability to monitor the agency's internal controls. If a manager at DGS asks a staff member to retrieve nine invoices, and it takes the staff 29 days to provide those invoices, one would have to conclude that DGS managers cannot monitor their invoice payment and approval processes in an effective and efficient manner.

Recommendation

1. The Mayor of the District of Columbia should ensure that DGS has the guidance and technical assistance necessary to properly design and implement effective internal controls, using an internal control framework. The framework should be instructive on how to design and implement both operational and financial controls, in addition to controls that will ensure District compliance with laws and regulations at both the local and federal level. At a minimum, the framework should:
 - Start with a risk assessment so that DGS can identify the agency's objectives and any related risks that could prevent it from achieving its mission.
 - Establish the structure, responsibility and authority for the agency's control environment, including standards of conduct.

- Include guidance for DGS on how to design, implement, and periodically test internal control processes.
- Assist DGS in ensuring that it collects and uses data and information of a high quality.
- Encourage effective monitoring of the internal control environment, so that management can ensure that the agency's internal controls continue to adapt and improve as the agency's objectives, laws, resources, and risks change over time.

DGS did not demonstrate that it has a process in place to verify the accuracy of invoices before they are approved for payment.

To review the invoice payment and approval process at DGS, ODCA first asked DGS to provide us with the policy and procedure manuals that describe their process for the review and approval of invoices.

The documentation DGS provided to ODCA included procedures for reviewing and approving invoices, including:

- Specific instructions for the construction/project manager to review and initial all invoices and provide evidence of their review.
- Requirements for collecting and storing documentation, including instructions for archiving invoices in a document management system.
- Checklists and standardized forms that must be completed for each invoice.

To test the efficiency and effectiveness of a process, ODCA meets with the staff responsible for performing the process to conduct a walkthrough of the process, and asks the staff to describe each step of the process and illustrate the process with an example. In the DGS walkthrough of the process for reviewing and approving invoices, staff used a single invoice as an example. The goal of this walkthrough was for ODCA to identify precisely how the process was executed, so that it could develop a method for testing the efficiency and effectiveness of the process.

During the DGS walkthrough of the process, we identified additional steps in the process which were not included in the policy and procedures manuals provided to ODCA. Specifically, when ODCA inquired of DGS as to how they verify the accuracy of an invoice before paying it, DGS described the following steps for assessing the accuracy of an invoice.

- When contractors initially bid on a project, they provide a breakdown of each task into line items which are then assigned a total dollar value, or cost, to complete the task.
- As the job progresses, the contractor will submit invoices for payment to DGS. After physically walking through the

construction site, DGS staff assess the percentage completed for each task and multiply the amounts included in the bid file, for each line item, by this percentage. This total amount is then compared to the amount billed to ensure that they are the same.

After gaining an understanding of the process DGS uses to verify the accuracy of each invoice, ODCA selected the accuracy portion of the process for further review, requesting supporting documentation for nine invoices from among all invoices paid in FY 2016.

Supporting documentation was initially requested on Oct. 12, 2016, and after waiting for nearly a month, the copies of the invoices that were provided to ODCA were at least partially illegible, with the Audit Supervisor noting that in many cases he could not read the line item descriptions or numbers on the invoices. We then requested legible copies and after another month, DGS could not provide readable copies of the invoices to support the accuracy of the payments DGS made to its contractors at Ballou High School, Roosevelt High School, and Shepherd Elementary School.

It is important to note that the GAO's Standards for Internal Control in the Federal Government (Green Book) identify five components of an effective system of internal control. Each of the five components—one of which is control activities or processes—must be deemed effective, in order for an entity to have an effective system of internal control. Furthermore, the Green Book specifically identifies the following requirement for an organization's control activities, or processes:

"Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained."

Because DGS has not established an effective system of internal control, ODCA was not able to verify that DGS is verifying the accuracy of its contractors' invoices before it approves them for payment. The documentation necessary to verify that the process was operating effectively was not "readily available," which renders the process ineffective, according to the Green Book. It also suggests that DGS managers cannot monitor their invoice payment and approval processes in an effective and efficient manner.

Recommendation

2. DGS needs to design, document and implement effective controls for the review and approval of invoices for its school modernization projects by:
 - Ensuring that its documented process addresses all necessary steps associated with reviewing and approving invoices before they are paid, including the accuracy of each invoice.
 - Ensuring that DGS maintains the necessary documentation, in a readily accessible format and location, to allow for an external party to verify that its process is operating effectively.

DGS did not have an effective process for closing out school modernization projects.

In FY 2016 DGS began documenting a formal process for closing out its school modernization projects and transferring custody of each school from the construction division that builds each school, to the facilities division that maintains each school.

ODCA sought to test both processes, first looking into the process by which the construction division closes out each project and deems a school modernization project "substantially complete." ODCA met with the construction services division to gain an understanding of the process. Although DGS did note that the process was still not finalized, ODCA reviewed the process anyway, not only because it is an important part of school modernization projects, but also to provide feedback to DGS as it develops and finalizes the process. Also, while DGS's written procedures may have been new, the need to effectively complete school modernization projects was not, so ODCA sought to evaluate the process as it occurred in FY 2016.

DGS is currently working on developing a set of checklists which the construction division can use to ensure school modernization projects are completed properly. These checklists are divided into three phases: Pre-Substantial Completion Checklist, Pre-Final Completion Checklist, and Post-Final Completion.

Each checklist includes a specific set of tasks that must be completed as well as columns for the project managers to initial their approval and confirm the date each task was completed.

The lists of tasks included within the three checklists are divided by activity and include the following:

- Certificates and permits that must be obtained, such as requirements for elevator, boiler, and health inspections.
- Requirements to ensure that all maintenance agreements and warranties are collected and stored.
- Verification that the school has achieved required certification in accordance with LEED, a green building rating system designed to certify environmentally sustainable, resource-efficient building designs.

For three schools, Ballou High School, Roosevelt High School, and Shepherd Elementary School, ODCA selected a sample of 14 items from among all three checklists and requested verification that they had been completed properly. The results of this review were as follows:

- For nine items that were marked complete, DGS was able to provide supporting documentation to verify that the task was completed.
- For three items that were marked complete, DGS was not able to provide documentation to verify that the task was completed.
- For one item that was marked complete, DGS stated that the item had been marked complete in error.
- For one item that DGS marked complete, DGS stated that DCPS was responsible for the completion of the item and that ODCA should request supporting documentation from DCPS.

According to the GAO's Standards for Internal Control in the Federal Government (Green Book),

"Documentation is a necessary part of an effective internal control system. The level and nature of documentation vary based on the size of the entity and the complexity of the operational processes the entity performs. Management uses judgment in determining the extent of documentation that is needed. Documentation is required for the effective design, implementation, and operating effectiveness of an entity's internal control system."

DGS lacked the necessary documentation to demonstrate that 4 of the 14 checklist items were complete, which means that neither DGS nor ODCA could verify that the school modernization project was completed properly.

Recommendation

3. DGS should finish the design and implementation of a process for verifying that each school modernization project is properly closed out. DGS should ensure that this process includes a supervisory level review, and that DGS retains documentation that verifies that each item on the checklist was completed, including items for which DGS has assigned responsibility to another District agency.

DGS could not demonstrate that it had an effective process for transferring custody of school modernization projects to DGS's Facilities Management Division.

In addition to ODCA's review of DGS's process for closing out a project and deeming it "substantially complete," we also reviewed the process by which custody of each school is transferred from the construction division that builds each school to the facilities division that maintains each school. Although DGS did note that the process was still not finalized, ODCA reviewed the process anyway, not only because it is an important part of school modernization projects, but also to provide feedback to DGS as it develops and finalizes the process. Also, while DGS's written procedures may have been new, the need to effectively complete school modernization projects was not, so ODCA sought to evaluate the process as it occurred in FY 2016.

DGS is currently working on developing a set of step-by-step procedures for ensuring that custody of each project is properly transferred between DGS's construction and facilities divisions. This process includes procedures which seek to involve the facilities division from the very outset of the project to its eventual completion. For example, training is a necessary part of ensuring that equipment continues to operate correctly once the school is in use, so the construction division coordinates with the facilities division to ensure that facilities division staff members attend required training sessions.

For three schools, Ballou High School, Roosevelt High School, and Shepherd Elementary School, ODCA selected a sample of items from among DGS's step-by-step process and requested verification that they were completed properly. Specifically, ODCA requested the following items:

- Evidence that the project manager in the construction division provided the turnover manager in the facilities division with schematic design documents for their comment and verification that the project manager received comments back from the turnover manager.
- Evidence that the project manager invited the turnover manager to the construction kick-off meeting and evidence that the turnover manager attended the construction kick-off meeting.

- Evidence that the turnover manager was invited to observe and did observe the commissioning of any systems on the project.
- Evidence that the turnover manager was provided with a list of all equipment, including the list and the date provided.
- Evidence that training sessions were conducted in accordance with contract documents.

ODCA requested these items from DGS on Dec. 2, 2016, and on Jan. 4, 2017, ODCA had not yet received any documents from DGS. At that point we canceled the request because we felt that the length of time that it took DGS to produce the information compromised its reliability.

As noted above, the GAO's Standards for Internal Control in the Federal Government (Green Book) identify five components of an effective system of internal control. Each of the five components—one of which is control activities or processes—must be deemed effective, in order for an entity to have an effective system of internal control. Furthermore, the Green Book specifically identifies the following requirement for an organization's control activities, or processes:

“Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.”

The documentation necessary to verify that this process was operating effectively was not “readily available,” which renders the process ineffective, according to the Green Book.

If ODCA were to accept documentation that should be readily available, as specified by the GAO's Standards for Internal Control, more than 30 days after it was requested, ODCA would substantially increase the risk of incorrectly concluding that the process was operating effectively. For example, DGS could collect the necessary documentation to corroborate its step-by-step process for just Ballou, Roosevelt, and Shepherd over the course of 30 days and then provide it to ODCA. ODCA would then incorrectly conclude that the process was operating effectively based on the documentation that DGS created after ODCA made its request. Because DGS could not provide evidence that the documentation was readily available (that is, not collected or generated over a 30-day period) the audit risk associated with documentation provided in this manner is very high.

DGS could not demonstrate that they had an effective process for transferring custody of school modernization projects from the construction division to the facilities division. Without a completed process and supporting documentation to verify that each item in the

step-by-step process was completed, DGS cannot be certain that it has addressed each of the risks associated with this process.

Recommendation

4. DGS should finish the design and implementation of a process for verifying that custody of each school modernization project is properly transferred between the construction division and the facilities division. As part of this process, DGS should ensure that it:
 - Includes a supervisory-level review.
 - Retains documentation in a readily accessible format and location that verifies that each item in the step-by-step process was completed.

DGS does not have sufficient processes in place to prevent, detect and/or correct violations of the Davis-Bacon Act.

The Davis-Bacon Act requires contractors to pay "prevailing wage rates" on all federal government and District construction projects in excess of \$2,000. These rates, which are set at the federal level by the U.S. Department of Labor, stipulate wages by classification (i.e. carpenter, electrician, roofer, etc.). Furthermore, the contracts that DGS signs with each contractor specifically state that the project will be performed in accordance with the Davis-Bacon Act, and that all contractors and subcontractors must comply with the law.

DGS identified two processes that it employs to monitor compliance with the Davis-Bacon Act, as follows:

DGS reviews payroll records that are certified and submitted by contractors. These records identify each worker's labor classification, the number of hours they worked, the dollar value of the fringe benefits they received and other identifying details about their compensation. These certified payroll records are compiled into a summary report that DGS reviews on a monthly basis for each project. During this review, members of the compliance team assess whether the breakdown of workers appears reasonable based on the type of work performed.

For example, if DGS reviews the certified payroll records submitted for construction work at one of the District's schools, the compliance team reviews the number of unskilled laborers, plumbers, and electricians that billed hours to the job and uses its professional judgement to determine if the mix of employees and hours appears reasonable.

ODCA could not assess the effectiveness of this process, however, primarily due to the following:

- Ordinarily, ODCA would select a sample of certified payrolls from among the total population submitted to the District during FY 2016 and reperform DGS's process in order to assess whether it is operating effectively. However, in this case, DGS had not identified any set of standards (i.e. rules of thumb) that determined whether the mix of workers and hours for a job appeared reasonable.

In order for this process to function properly, DGS would have to develop an expectation for the type of workers and number of hours necessary to complete a given task. This expectation could be developed internally based on the accumulated experience of DGS's staff, or externally based on the work of a standard setting body in the construction industry. DGS would then have to provide those standards to ODCA for review. ODCA did not receive any such standards from DGS. Without an ability to clearly articulate a specific set of standards that would determine whether the mix of workers and hours appear reasonable for a given task, ODCA cannot test the process to assess its effectiveness.

Even if DGS had defined a set of standards that could then be used to estimate the number of workers and hours necessary to complete a task, DGS would also need to assign a risk tolerance for this control. The GAO's Standards for Internal Control in the Federal Government state that management must define risk tolerances, or specific and measurable terms that are clearly stated, in order to define an acceptable level of variation for a control.

For example, if DGS estimates that a task requires four plumbers and a contractor is only using three, does that trigger further investigation? How about if DGS estimated that a given task required four plumbers but the contractor planned to use 10? In other words, DGS needs to define how *precise* the estimate must be, in order to apply this process consistently across all of its projects. Without defining what is an acceptable level of variation and what is not an acceptable level of variation, ODCA cannot reperform the process to determine if it is functioning as intended.

DGS also conducts jobsite visits on selected projects to interview workers and determine if they are performing tasks in accordance with their labor classification. For example, DGS will try to determine if a worker is performing work as an electrician but being paid at the lower pay scale assigned to general laborers. DGS will also check to see if workers are receiving fringe benefits in accordance with the law. While onsite visits may uncover malfeasance, these are not structured processes

with documentation such as interview notes, referrals for follow-up investigations, information on the manner in which employees are selected for review, and/or data on the number of jobsites that are visited each fiscal year.

Without an understanding of what DGS staff discussed with each worker as they conducted visits to each project, or documentation supporting how investigations were handled, ODCA cannot reperform this process to assess whether it is operating effectively.

Although the DGS staff executing these processes should be recognized for attempting to enforce compliance with this law, ODCA cannot verify that these processes are operating effectively. Our review of both processes demonstrates that DGS needs to develop effective and robust processes to mitigate the risk associated with Davis-Bacon Act compliance. Without this, ODCA will not be able to test the operating effectiveness of these processes, or to examine the manner in which DGS monitors compliance with the Davis-Bacon Act.

Recommendation

5. DGS should ensure that processes used to detect Davis-Bacon Act violations are properly designed and implemented, including the retention of sufficient appropriate documentation to facilitate ODCA's review of the operating effectiveness of the processes.

The District is not monitoring the status of Davis-Bacon Act complaints filed by workers on its school modernization projects to ensure that contractors are paying appropriate wages and benefits.

In 2015 we reported that a review of school modernization records found that 32 of 71 sample payments were missing certified payroll records, which means DGS was not able to demonstrate that prevailing wages were paid in those instances.

During the course of ODCA's current audit of DGS, we noted news media accounts describing violations of the Davis-Bacon Act on several federal government construction projects.

We researched this issue, including reaching out to some of the trade unions and nonprofits identified in the articles to inquire about their experiences with the Davis-Bacon Act, so that we could get an idea of the types of issues we might want to audit for the District's school modernization program. Some of these organizations actively assist workers in filing complaints of the Davis-Bacon Act, others represented specific trade unions and described their ongoing efforts to ensure their workers are paid in accordance with the law. They identified a number of problems they claimed to have encountered in the past with Davis-Bacon Act compliance (not specific to the District), including:

- A lack of consequences for bad actors, with most organizations noting that they never see or hear about debarment proceedings for violations that are identified.
- Classifying employees in a category of labor that pays a lower hourly rate, while requiring the employee to perform work that should be paid at a higher hourly rate.
- Not paying employees for overtime or providing fringe benefits.

Based on the issues described, ODCA examined the nature of the District's efforts to enforce compliance with the law. ODCA reviewed a 2014 court case brought against two area contractors participating in school modernization projects, a complaint by a pipefitter on another school project who claimed he was not paid the appropriate wage, and another complaint filed related to two other school projects¹. The latter included four workers at one contractor, who alleged that they had not received overtime pay, and that they were not paid the appropriate prevailing wage.

ODCA asked DGS about its process for addressing Davis-Bacon Act wage violations. DGS stated that it refers all Davis-Bacon Act related complaints to the Department of Employment Services (DOES), which in turn refers these cases to DOL. This means that neither DGS nor DOES could provide ODCA with any information on the status of these particular cases, nor could they provide ODCA with any information on the scope of the problem in the District (i.e. number of cases, dollar values, etc.). With regard to the 2014 court case, DOES was "not aware" of the complaint brought against two of the District's contractors. With regard to the case involving the two school projects, we were told that DOES was "not aware or familiar with a complaint filed with regard to" the two school projects. Asked if there was a log of Davis-Bacon Act wage violations that have occurred in the District, we were told "DOES had not established a log of Davis-Bacon violations."

ODCA did confirm that DOES staff provided guidance to workers claiming violations of the Davis-Bacon Act to enable them to file the appropriate complaints with the Labor Department.

However, according to the GAO's Standards for Internal Control in the Federal Government, Principle 1 on demonstrating a commitment to integrity and ethical values:

"...management reinforce(s) the commitment to doing what is right, not just maintaining a minimum level of performance necessary to comply with applicable laws and regulations..."

¹ The plaintiffs in this case alleged, among other things, that the defendants did not pay overtime wages or prevailing wages for their job classification pursuant to Davis-Bacon Act. The U.S. District Court for the District of Columbia entered a default judgment against one of the contractors in the amount of \$193,365. (The second contractor was dismissed from the suit.) This amount included wages owed, liquidated damages and attorneys' and filing fees. See *Victor Hernandez, et al. v. PN Drywall Contractor LLC*, No. 14-1467, U.S. Dist Ct for D.C (2015).

The District of Columbia is subject to the federal Davis-Bacon law because of its history as a part of the federal government prior to home rule in the 1970s. At the same time, according to the Labor Department, 30 states have prevailing wage laws similar to the Davis-Bacon Act. Maryland has one² and Virginia does not. States apply various enforcement tools to ensure compliance. Missouri requires a contractor on a public works project to provide a completed affidavit of compliance with the prevailing wage rules before receiving a final payment from the state agency.³ New York's Dormitory Authority—a public benefit corporation that manages public works projects for a variety of agencies—funds an investigative position at the state's labor agency to enforce wage laws on Authority projects.⁴ Montgomery County, Md., enforces its own prevailing wage law through a contract with a California-based contractor that affirmatively audits each project each month for wages paid to each employee by each contractor and subcontractor without waiting for a specific complaint to be lodged.

The District has not yet developed effective and robust processes to mitigate the risks associated with Davis-Bacon Act compliance. As a result, neither DGS nor DOES can ensure that its contractors are paying employees in accordance with federal law, which may create the following challenges for the District:

- Violations could be detrimental to the reputation of the District as some employees find out that they have lost out on wages or benefits, perhaps deciding not to work with the District.
- Contractors may be submitting bills to the District in accordance with hourly rates as specified by the Davis-Bacon Act, while paying their employees at a lower rate per hour, thereby increasing their profit margins and shortchanging their employees.
- Shortchanging of employees by one contractor to lower the amount of the bid that they submit to the District could lead to copycat behavior by other contractors, providing a strong incentive to shortchange employees as well.

The unique circumstance of the District being subject to a federal prevailing wage law, with responsibility basically split between two District agencies—DGS and DOES—on school modernization and other capital projects creates a significant accountability gap with regard to compliance.

² See Md. STATE FINANCE AND PROCUREMENT Code Ann. § 17-201 et seq.

³ See § 290.010 R.S. Mo. et seq.

⁴ See New York State Office of the State Comptroller report “Monitoring of Prevailing Wage Compliance on Construction Contracts”, Report 2015-S-99, April 2017.

Recommendation

6. The D.C. Council should conduct a fact-finding oversight hearing, and draft and enact a local law providing implementation guidelines for the District's compliance with and enforcement of the Davis-Bacon law, including specific responsibility for receiving and following up on complaints that are currently forwarded to DOL. At a minimum, a D.C. government agency should have explicit authority, responsibility, and funding to ensure that any prevailing wage law violations result in appropriate action by D.C. agencies, including debarment of a contractor.

Audit Results Summary

Finding	Recommendation
DGS was unable to provide documentation in a timely manner, which made it difficult, and in some cases impossible, to draw conclusions about its processes.	The Mayor of the District of Columbia should ensure that DGS has the guidance and technical assistance necessary to properly design and implement effective internal controls, using an internal control framework. The framework should be instructive on how to design and implement both operational and financial controls, in addition to controls that will ensure District compliance with laws and regulations at both the local and federal level. At a minimum, the framework should: Start with a risk assessment so that DGS can identify the agency's objectives and any related risks that could prevent it from achieving its mission. • Establish the structure, responsibility and authority for the agency's control environment, including standards of conduct. • Include guidance for DGS on how to design, implement, and periodically test internal control processes. • Assist DGS in ensuring that it collects and uses data and information of a high quality. • Encourage effective monitoring of the internal control environment, so that management can ensure that the agency's internal controls continue to adapt and improve as the agency's objectives, laws, resources, and risks change over time.
DGS did not demonstrate that it has a process in place to verify the accuracy of invoices before they are approved for payment.	DGS needs to design, document and implement effective controls for the review and approval of invoices for its school modernization projects by: • Ensuring that its documented process addresses all necessary steps associated with reviewing and approving invoices before they are paid, including the accuracy of each invoice. • Ensuring that DGS maintains the necessary documentation, in a readily accessible format and location, to allow for an external party to verify that its process is operating effectively.

DGS did not have an effective process for closing out school modernization projects.	DGS should finish the design and implementation of a process for verifying that each school modernization project is properly closed out. DGS should ensure that this process includes a supervisory level review, and that DGS retains documentation that verifies that each item on the checklist was completed, including items for which DGS has assigned responsibility to another District agency.
DGS could not demonstrate that it had an effective process for transferring custody of school modernization projects to DGS's Facilities Management Division.	DGS should finish the design and implementation of a process for verifying that custody of each school modernization project is properly transferred between the construction division and the facilities division. As part of this process, DGS should ensure that it: • Includes a supervisory-level review. • Retains documentation in a readily accessible format and location that verifies that each item in the step-by-step process was completed.
DGS does not have sufficient processes in place to prevent, detect and/or correct violations of the Davis-Bacon Act.	DGS should ensure that processes used to detect Davis-Bacon Act violations are properly designed and implemented, including the retention of sufficient appropriate documentation to facilitate ODCA's review of the operating effectiveness of the processes.
The District is not monitoring the status of Davis-Bacon Act complaints filed by workers on its school modernization projects to ensure that contractors are paying appropriate wages and benefits.	The D.C. Council should conduct a fact-finding oversight hearing, and draft and enact a local law providing implementation guidelines for the District's compliance with and enforcement of the Davis-Bacon Act, including specific responsibility for receiving and following up on complaints that are currently forwarded to DOL. At a minimum, a D.C. government agency should have explicit authority, responsibility, and funding to ensure that any prevailing wage law violations result in appropriate action by D.C. agencies, including debarment of a contractor.

Conclusion

In both FY 2014 and FY 2015, ODCA identified a number of internal control deficiencies in the District's school modernization program. ODCA's FY 2016 audit of the District's school modernization program can be summarized as follows:

- An examination of the totality of evidence provided over the course of this audit demonstrated that DGS is unable to provide support for their processes and decisions in a timely manner, which increases the risk that ODCA will incorrectly report to the Council that DGS's processes are operating effectively, when in fact they are not.
- Because ODCA identified a number of deficiencies with the invoice payment and approval process at DGS in FY 2014, we decided to review the process again in FY 2016. We found that DGS could not demonstrate that it has a process in place to verify the accuracy of invoices before they are approved for payment.
- ODCA also sought to examine the processes DGS uses as it completes a school modernization project and subsequently transfers custody of the project from the division that monitors construction projects as they are performed, to the division that will perform maintenance at the school once it has been completed. ODCA noted that DGS was able to provide some supporting documentation to confirm that certain items on its completion checklist were completed properly, but also noted that DGS was not yet finished with the design and implementation of the process.
- With regard to the process for transferring custody of the school from the construction division to the facilities division, ODCA was unable to verify any of the processes DGS employs, and we gave up on receiving supporting documentation after waiting in excess of 30 days.
- The Davis-Bacon Act requires District contractors performing construction work in the city to pay their employees the prevailing wage rate set by the Labor Department. ODCA found that the District is not verifying that its contractors are paying their workers all the wages and benefits that they are entitled to under the Davis-Bacon Act. ODCA also found that D.C. has an accountability gap with regard to its monitoring of the status of Davis-Bacon complaints filed by workers on its school modernization projects.

Collectively, the results indicate that the District's school modernization program lacks effective internal controls. This means that for the District and this program's many stakeholders:

- The District may not be able to demonstrate compliance with applicable laws and regulations.
- There is an increased risk of fraud, waste, and abuse within the program.
- The program cannot be managed and examined in an efficient and effective manner, which means the Council is less likely to receive timely, actionable information that it can use to evaluate the program.
- Until DGS can solve its internal control deficiencies, ODCA will struggle to compile accurate, verifiable information over the course of an audit, much less evaluate it on behalf of the Council.

Based on the totality of evidence gathered over the last three fiscal years, it does not appear as though the District has adequately prepared its school modernization program to be audited. It does not seem reasonable to ask DGS employees to answer the inquiries of an auditor, when the organizational structures, laws, and standards required to successfully prepare for such an audit have not been established and communicated to the agency's employees. The District has not provided DGS with the guidance and technical assistance necessary to establish an effective internal control environment. It may not be appropriate for ODCA to continue auditing the District's school modernization program without first evaluating how the program has been prepared for an audit.

If the objective of ODCA's audit is to provide timely, relevant information to the Council that will assist it in improving the effectiveness, efficiency, and accountability of the District's school modernization program, then ODCA should identify the cause of the repeated control deficiencies noted over the last three fiscal years.

It is our intention to research and draft a white paper focused on the state of internal control development in the District, with a particular focus on the operational controls that govern how the District's employees do their jobs. It is ODCA's expectation that this white paper will culminate in a set of formal recommendations for the Council and Mayor of the District of Columbia.

Agency Comments

On June 8, 2017, we sent a draft copy of this report to DGS for review and written comment. DGS responded with comments on June 30, 2017. Agency comments are included below in their entirety, followed by ODCA's response.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



June 30, 2017

Kathleen Patterson, Auditor
Office of the D.C. Auditor
717 14th Street NW, 9th Floor
Washington D.C. 20005

Re: Department of General Services' ("DGS") and Executive Office of the Mayor (EOM) Response to the Office of the District of Columbia Auditor ("ODCA") draft report dated June 8, 2017 and entitled: *"The Department of General Services Needs Guidance and Assistance to Develop Effective Internal Controls (the "Draft Report")."*

Dear Ms. Patterson:

Thank you again for the opportunity for DGS to provide comments to the above Draft Report. Again, we value the opportunity to review and improve DGS' implementation of the District's school modernization program. We provide the following responses to the specific ODCA recommendations outlined in the Draft Report:

RECOMMENDATION #1

"The Mayor of the District of Columbia should ensure that DGS has the guidance and technical assistance necessary to properly design and implement effective internal controls, using an internal control framework. The framework should be instructive on how to design and implement both operational and financial controls, in addition to controls that will ensure District compliance with laws and regulations at both the local and federal levels. At minimum, the framework should:

- Start with a risk assessment so that DGS can identify the agency's objectives and any related risks that could prevent it from achieving its mission.
- Establish the structure, responsibility and authority for the agency's control environment, including standards of conduct.
- Include guidance for DGS on how to design, implement and periodically test internal control processes.
- Assist DGS in ensuring that it collects and uses data and information of a high quality.
- Encourage effective monitoring of the internal control environment, so that management can ensure that the agency's internal controls continue to adapt and improve as the agency's objectives, laws, resources and risks change over time."

DGS RESPONSE: Although this recommendation is not specifically directed towards DGS, the agency agrees with the importance and necessity of ensuring that all construction project management activities are implemented utilizing effective internal control measures. During fiscal year 2018, the agency will conclude the following efforts to improve and develop more effective internal controls:

1. The agency is currently updating its project delivery manual to include requisite project delivery checklists, industry best practices related to project management and appropriate approval requirements for project changes, contingency usage and invoicing;
2. The agency will develop policies and procedures related to record retention and file management with respect to school modernization activities and capital construction projects generally; and
3. The agency has initiated an overall effort to improve policies and procedures throughout the entire agency which will specifically address construction project delivery procedures, project turnover protocols, records management and retention practices and approval procedures for construction project activities.

Although DGS agrees that effective internal controls are critical to successful construction project delivery and essential to the agency, the agency does not agree with the ODCA's representations related to the overall timeliness of responses from DGS and the ODCA's unsupported suggestion that DGS records are unreliable or altered. The statements regarding timeliness failed to acknowledge that an immediate response was neither requested nor required and that DGS and ODCA assigned a specific response deadline to all requested records, which was generally seven (7) days from request, unless otherwise agreed. During this audit, DGS received forty-seven (47) requests for records from the ODCA, of which 19% of all requests were produced ahead of the deadline and 43% were produced on or prior to the agreed upon deadline. Records produced after the deadline were, on average, produced within 5 days of the requested deadline. Although DGS does acknowledge that there is room for improvement, the overall responsiveness of the agency was not as portrayed by the ODCA in the Draft Report.

EOM RESPONSE: EOM concurs generally that all agencies reporting to the Mayor, including DGS, should be provided support and oversight to ensure compliance with all federal and local laws and should maintain effective systems of internal controls. We agree that agencies should keep records of current projects immediately accessible and up-to-date, whether those records are on-line, paper, or a mix of both. However, due to the press of other work and multiple competing demands, agencies may not always be able to make full productions immediately. We will endeavor to work with the agencies to make timely productions to reasonable demands or to communicate promptly any delays, so as to avoid any negative inferences about the reasons for delay or about the integrity of record keeping.

RECOMMENDATION #2

“DGS needs to design, document and implement effective controls for the review and approval of invoices for its school modernization projects by:

- Ensuring that its documented process addresses all necessary steps associated with reviewing and approving invoices before they are paid, including the accuracy of each invoice.
- Ensuring that DGS maintains the necessary documentation, in a readily accessible format and location, to allow for an external party to verify that its process is operating effectively.”

DGS RESPONSE: Although DGS acknowledges that there is always an opportunity for improvement to its approval procedures and that the agency is continuously looking for ways to enhance its internal controls, DGS disagrees with this recommendation because the agency already has an effective process for review and approval of invoices for school modernization projects. ODCA’s recommendation was primarily as a result of the length of time required to produce the requested invoices, but this was not completely reflective of the effectiveness of the invoice approval process. DGS Capital Construction Division (CCD) uses Prolog software for project management. In an effort to improve invoice tracking capabilities and decrease invoice processing times, CCD implemented electronic submission of vendor invoices in 2015. Vendors are required to upload invoices into Prolog for review by the project manager.

Project managers must walk the project site each month with the general contractor for each project under construction. During the walk-through, the project manager and general contractor review the schedule of values to determine the level of completion and to determine the percent complete. After the walk-through is completed, the general contractor prepares an invoice packet based upon the previously agreed upon percent complete. The invoice packet contains the following:

- Vendor invoice on letter head and/or AIA document – should match pencil copy & DGS Pay Request Forms
- DGS Pay Request Forms page 1 & 2 – should match pencil copy
- Release of Lien – if applicable
- Retainage Reduction Letter – if applicable
- CBE Form
- Additional supporting documentation

CCD project managers receive e-mail notification automatically from Prolog when an invoice has been uploaded by the vendor. The project manager is responsible for reviewing the invoice to ensure that work or material billed is accurate, corresponds to the pencil copy from the walk-through and that all required supporting documentation is accurate, complete and included. After the project manager signs the invoice, the entire packet is submitted to the program manager (external senior manager) or cluster leader (DGS senior manager) for

review and approval. Once the invoice is approved by the respective cluster leader, it is forwarded to the Project Management Office (PMO) for review. PMO staff check to make sure that the period of performance falls within the contract dates, that the amounts being billed are not in excess of available funds, that the billing amounts on all submitted documents match and that all required documentation is attached and correct. If there are errors, discrepancies or missing documents, the invoice is rejected in Prolog by PMO and a rejection notification is sent to the project manager and cluster leader with details explaining the deficiencies. If the invoice packet satisfies the PMO review, it is forwarded to the CCD Deputy Director for review and approval. All fully approved invoices are attached to the respective receipt in PASS by PMO staff.

DGS instructions, forms and checklists for project managers and vendors related to invoice processing are located on DGS' website at the following link:

[Project Manager Invoice Processing Instructions \(https://dgs.dc.gov/node/1081042\)](https://dgs.dc.gov/node/1081042)

[Project Manager Invoice Processing Checklist \(https://dgs.dc.gov/node/1081062\)](https://dgs.dc.gov/node/1081062)

RECOMMENDATION #3

“DGS should finish the design and implementation of a process for verifying that each school modernization project is properly closed out. DGS should ensure that this process includes a supervisory level review, and that DGS retains documentation that verifies that each item on the checklist was completed, including items for which DGS has assigned responsibility to another agency.”

RESPONSE: DGS agrees with this recommendation and has identified proper project close-out as a priority for the agency. The DGS Capital Construction Division (CCD) and the DGS Facilities Maintenance Division (FMD) utilize a separate close-out manual that CCD will integrate into the updated CCD project delivery manual during fiscal year 2018. Additionally, the agency's efforts will include supervisory cluster-leader review of project close-out activities and training for all project managers to ensure adherence to proper close-out procedures. Additionally, as discussed with the ODCA, the three schools selected by the ODCA to test the close-out checklists (Ballou HS, Roosevelt HS and Shepherd ES) were actually completed before adoption of the project delivery manual and checklists and therefore, it is not reasonable to retroactively apply requirements to a project completed before the implementation of the requirements.

RECOMMENDATION #4

“DGS should finish the design and implementation of a process for verifying that custody of each school modernization project is properly transferred between the construction division and the facilities division. As part of this process, DGS should ensure that it:

- Includes a supervisory level review

- Retains documentation in a readily accessible format and location that verifies that each item in the step-by-step process was completed.”

DGS RESPONSE: DGS agrees with this recommendation and the agency is currently finalizing the written turnover protocol to better facilitate the effective close-out and transfer of completed construction projects from the CCD to the FMD. We anticipate completion and implementation of the turnover protocol during fiscal year 2018. The implementation of more effective turnover procedures will also include training of project management staff to ensure compliance.

RECOMMENDATION #5

“The D.C. Council should draft and enact a local law providing implementation guidelines for the District’s compliance with and enforcement of the Davis-Bacon law, including specific responsibility for receiving and following up on complaints that are currently forwarded to DOL. At a minimum, a D.C. government agency should have explicit authority, responsibility and funding to ensure that any prevailing wage law violations result in appropriate action by D.C. agencies, including debarment of a contractor.”

DGS RESPONSE: Although, this recommendation was not directed to DGS, the agency disagrees with this recommendation. DGS currently forwards complaints regarding Davis-Bacon violations to the Department of Employment Services (DOES). DOES is the appropriate agency for tracking and enforcement activities related to such complaints. The recommendation suggests that enforcement and tracking activities should rest with the various contracting agencies, including DGS, which would likely result in confusion, inconsistency and scattered distribution of resources needed to address this particular issue.

EOM RESPONSE: EOM appreciates the suggestion that processes for reporting and enforcing prevailing wage laws could be improved, without agreeing at this time that legislation is necessary. EOM is committed to ensuring that all the District’s contractors comply with the range of applicable human rights and labor laws, and will take seriously the suggestion that reforms should be undertaken to more effectively ensure compliance with labor laws on District projects. Providing pathways to the middle class is a signature goal of the Bowser Administration, and that goal is impaired if contractors flout important protections for their workers and subcontractors. It is of course essential that workers know where to report a violation, that the appropriate agencies investigate such charges and enforce the laws, and that information about violators is fed back to the District so that a bidder’s record of compliance is well understood and rewarded or penalized in future bid proceedings. We would certainly appreciate knowing if the charge of violations of prevailing wage provisions is pervasive or anecdotal, and what specific suggestions the ODCA has that can and should be undertaken without need for legislation.

CONCLUSION:

DGS and EOM welcome the recommendations from the ODCA and the opportunity to improve upon the school modernization program. As provided previously, DGS and DCPS have already implemented various improvements to the school modernization program to enhance planning, accountability and cost controls. We share the common goal of making improvements to the execution of the school modernization program and are taking strides to improve the existing program. Please do not hesitate to contact me at 202.727.2800 if you have questions or require additional information.

Sincerely,



Greer Johnson Gillis, P.E.
Director

Cc: Betsy Cavendish, EOM
Camille Sabbakhan, DGS
Spencer Davis, DGS
JocCole Burton, DGS
Jeff Bonvechio, DGS

ODCA Response to Agency Comments

We greatly appreciate the comprehensive response provided by the Department of General Services (DGS) to the five recommendations included in the draft report. We applaud DGS for the work it outlines in response to Recommendations 1, 3, and 4. On the issue of the timeliness of response, we acknowledge having received a great many documents on time or shortly thereafter. And we would welcome the agency's perspective on the research we will be undertaking on how to improve the implementation of effective, consistent internal controls throughout the District government.

We noted the DGS response to our second recommendation and we appreciate its description of the invoice process that it believes it has implemented. We were not able to verify that such a process was actually in use and stand by our finding and recommendation.

With regard to the report's discussion of the Davis-Bacon Act, we have added a finding discussed with DGS at the May 17, 2017, closeout meeting on DGS processes to affirm contractor compliance with requirements, which we found to be insufficient. We recommend enhanced procedures and document retention. With regard to the administration's responses on our Davis-Bacon Act recommendations, we have added language to the final report to make clear that we reviewed complaints specific to the school modernization program, and that neither DGS nor DOES had any information on the complaints, nor does DOES, the District's labor agency, maintain a log of such complaints. We have not faulted either DGS or DOES for the lack of affirmative government oversight of potential Davis-Bacon violations. The absence appears to be a long-standing issue dating to Home Rule itself and the fact that the federal government assumed what is arguably a state government responsibility.

We recommend legislation in order to encourage a comprehensive review of prevailing wage enforcement. We amended our draft recommendation to suggest that the Council of the District of Columbia conduct an oversight hearing to gather the facts on prior complaints, which should include asking the U.S. Department of Labor to provide a status report on complaints from District workers. The Council may wish to hear from other states. For example, it was instructive to learn that Montgomery County, under its own and Maryland state prevailing wage laws, reviews each payroll each month for compliance without waiting for a complaint to generate a government review.

Finally, we thank DGS Director Gillis and her leadership team for their cooperation and ongoing collaboration.