



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Monitoring of Prevailing Wage Compliance on Construction Contracts

Dormitory Authority of the State of New York



Report 2015-S-99

April 2017

Executive Summary

Purpose

To determine whether the Dormitory Authority of the State of New York (Authority) monitors the contractors and sub-contractors on its projects to ensure they pay employees at the prevailing wage rate. The audit covered the period January 1, 2014 through June 17, 2016.

Background

The Authority's purpose is to finance and construct buildings for a variety of public and not-for-profit entities, including universities, health care facilities, and State agencies. Most Authority construction contracts require the contractors to pay prevailing wages. The Department of Labor (Labor) assists the Authority by enforcing compliance with Article 8, Section 220 of the State Labor Law on Public Work (Article 8) that requires payment of prevailing wages. Labor requires agencies and authorities such as the Authority to advertise a project as a Public Work, provide contractors with the appropriate prevailing wage rate schedule for the project, and perform a review of certified payrolls submitted by contractors to demonstrate they paid prevailing wages.

Key Findings

- The Authority has implemented appropriate controls to meet its specific Article 8 responsibilities, which are to: properly advertise prevailing wage construction projects; ensure contractors file an original payroll; and review whether the payrolls include all required information. However, although Authority project managers and field representatives site visited construction projects, they did not routinely inspect the sites to ensure that prevailing wage rates were posted, as required.
- In addition to the aforementioned activities, the Authority has an agreement with Labor (Agreement) to fund an Investigator dedicated to enforcement of the prevailing wage law on Authority projects in the New York City area. The Authority could improve its controls by obtaining documentation that detailed the Investigator's work and helped officials to determine if the services provided, and the results achieved, adequately fulfilled the requirements of the Agreement.

Key Recommendations

- Ensure Authority project managers and/or field representatives periodically verify prevailing wage postings on job sites. Require verifications of wage postings to be documented.
- Require Labor to provide the Authority with periodic reports that sufficiently detail the nature and results of the Investigator's monitoring efforts regarding Authority construction projects.

Other Related Audits/Reports of Interest

[Dormitory Authority of the State of New York: Contract Participation of Minority- and Women-Owned Business Enterprises \(2014-S-7\)](#)

[Office of Mental Health: OMH Contract With Shorefront Mental Health Board - Compliance With Prevailing Wage Law \(2013-S-62\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

April 4, 2017

Mr. Alfonso L. Carney, Jr.
Chair
Dormitory Authority of the State of New York
515 Broadway
Albany, NY 12207

Dear Mr. Carney:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Monitoring of Prevailing Wage Compliance on Construction Contracts*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

| | |
|--|----|
| Background | 4 |
| Audit Findings and Recommendations | 6 |
| Compliance With Article 8 Requirements | 6 |
| Compliance With Department of Labor Requirements | 7 |
| Recommendations | 7 |
| Audit Scope and Methodology | 7 |
| Authority | 8 |
| Reporting Requirements | 8 |
| Contributors to This Report | 9 |
| Agency Comments | 10 |

State Government Accountability Contact Information:

Audit Director: John Buyce

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The Dormitory Authority of the State of New York (Authority) is a public benefit corporation established in 1944. The Authority's purpose is to finance and construct buildings for a variety of public and not-for-profit entities, including universities, health care facilities, and State agencies. Most Authority construction contracts require the contractors to pay prevailing wages in accordance with Article 8, Section 220 of the State Labor Law (Article 8). Article 8 established requirements to ensure that contractors of taxpayer-funded public works construction projects pay the rate set by law for public work projects (prevailing wage) as follows:

- Projects must be identified as public work at the bid solicitation;
- Contractors must file an original payroll which includes each worker's name, address, hours and days worked, hourly rate, and job title;
- Wages should not be paid at less than the prevailing wage rate for the locality where the work is performed;
- Prevailing wage notification must be conspicuously posted at the job site; and
- All prevailing wage rate complaints must be investigated.

The Department of Labor (Labor) is responsible for enforcing Article 8 requirements and for investigating all prevailing wage complaints. Agencies that let contracts for public work projects, such as the Authority, also have a role in monitoring contractor compliance with Article 8 requirements. Labor requires that such agencies and authorities:

- Advertise a project as public work;
- Provide contractors with the appropriate prevailing wage rate schedule for the project; and
- Perform a payroll review of the certified payrolls submitted by contractors.

To solicit bids for contract, the Authority advertises projects in the New York State Contract Reporter (the State's official publication of procurements), in newspapers, and on its website, including a link to the bid package. The bid package includes the Project Manual with the appropriate prevailing wage rate schedule and requirements for advertisement as a public work project. The Authority also informs prospective contractors at the pre-bid meeting that the project is subject to prevailing wage requirements.

Labor's payroll review requires the Authority to check the payrolls for completeness, including reviewing for a notarized Application for Payment, a contractor certification form with original signatures, and Certified Payrolls containing each worker's name, address, last four digits of the Social Security number, work classification, rate of pay, hours worked, and deductions.

The Authority also has an Enhanced Prevailing Wage Enforcement Funding Agreement (Agreement) with Labor to fund a Public Work Wage Investigator (Investigator) dedicated to reviewing Authority construction projects in the New York City area for prevailing wage compliance. Per the latest Agreement, the Authority funds up to \$119,600 annually for salary, fringe benefits, and non-

personal services and administrative costs. During the scope of our audit, Labor reported that it initiated 35 case investigations of Authority projects.

The Authority initiated 192 construction contracts totaling about \$376 million during the period January 1, 2014 through January 7, 2016. The projects in the New York City area totaled about \$264 million, or 70 percent of the total.

Audit Findings and Recommendations

We found the Authority has implemented appropriate controls to meet its specific Article 8 responsibilities, namely to: properly advertise prevailing wage construction projects; ensure contractors file an original payroll; and review whether the payrolls include all required information. In addition to these efforts, the Authority funds an investigative position at Labor that is devoted to enforcement of wage laws on Authority projects. However, the Authority could improve its monitoring of the Investigator's efforts and results by obtaining detailed evidence of the Investigator's actual work. Also, when visiting construction sites, Authority staff did not inspect the sites to ensure prevailing wage rates were posted, as required.

Compliance With Article 8 Requirements

The Authority implemented procedures to advertise construction projects as prevailing wage at bid solicitation, ensure contractors file an original payroll, and review whether the payrolls include all required information. The Authority also provided training on prevailing wage and code of conduct/ethics to contractors at project kick-off meetings, and performed background checks on contractors to determine if they were on lists of debarred contractors in surrounding states. The background checks could help weed out problem contractors and prevent prevailing wage abuses. Although the Authority has project managers and field representatives on site at construction projects, Authority officials told us they do not check whether each site has conspicuous postings of prevailing wage notification. The absence of such postings could increase the risk that prevailing wage rates are not paid.

As noted previously, the Authority has a formal Agreement with Labor to fund an Investigator (at Labor) who is dedicated to enforcement of the prevailing wage law on Authority projects in the New York City area. This arrangement enables the Authority to benefit from the Investigator's knowledge of and experience in prevailing wage laws and enforcement activities. However, the Authority relies on the Investigator to respond to all applicable prevailing wage complaints and carry out enforcement activities with little or no Authority oversight. We concluded that the Authority should strengthen its procedures to monitor the specific work done by the Investigator as well as the results of the Inspector's efforts.

Currently, Labor provides the Authority with a spreadsheet listing each case review and identifying the contractor, project, location, status (open, active, or closed), and resolution. However, neither the Authority nor Labor provided us with detailed supporting documentation of the Investigator's enforcement activities, which we had requested. Such activities could include, for example, results of site visits (announced or unannounced), interviews of workers, investigations of complaints, tests of contractor records, and preparation of supporting work papers and reports of results. We were told that Labor issues reports to the contractors it reviews, and we requested copies of such reports. However, neither Labor nor the Authority provided copies of the reports to us.

The Agreement does not specify any records or documents that Labor is required to periodically provide to the Authority. Instead, the Agreement states that Labor will provide periodic reports

“as agreed to by the Authority and Labor relative to Labor’s enforcement activities on behalf of the Authority.” However, because Authority officials had not requested documentation detailing the pertinent aspects of the Investigator’s work, they had limited evidence of the extent of the Investigator’s monitoring and enforcement efforts on Authority projects. Therefore, officials could not independently assess whether those efforts, and the results achieved, adequately fulfilled the requirements of the Agreement.

Compliance With Department of Labor Requirements

Our review of 39 construction contracts found all were advertised as Public Work during the letting of the contract and, in general, contractors were provided with a copy of the appropriate prevailing wage rate schedule for the project. Additionally, all of the construction contracts contained evidence that the Authority performed background checks on each contractor. With only a few exceptions, meeting minutes indicated prevailing wage and ethics training was provided at the pre-bid or kick-off meeting.

We also found that the Authority reviews the contractors’ certified payrolls as required. In several cases, the Authority returned a payment request because a certified payroll was incomplete and did not list all of the workers and job titles, rates of pay and deductions, and delayed payments when sub-contractors’ worker information was incomplete. Further, our tests of certified payrolls for 85 contractors and sub-contractors totaling over 1,000 paychecks showed wages were paid at the prevailing wage rate with only minor exceptions.

Recommendations

1. Ensure Authority project managers and/or field representatives periodically verify prevailing wage postings on job sites. Require verifications of wage postings to be documented.
2. Require Labor to provide the Authority with periodic reports that sufficiently detail the nature and results of the Investigator’s monitoring efforts regarding Authority construction projects. Request and obtain adequate supporting documentation to ensure the Authority receives the services it pays for as prescribed by the Agreement.

Audit Scope and Methodology

The objective of our audit was to determine whether the Authority monitors the contractors and sub-contractors on its projects to ensure they pay employees at the prevailing wage rate. The audit covered the period January 1, 2014 through June 17, 2016.

To accomplish our audit objective, we conducted interviews of Authority and Labor officials, reviewed a sample of contracts, and analyzed payroll records. We reviewed the listing of 2,100 Authority contracts initiated from January 1, 2014 through January 7, 2016 which included various types of Authority contracts such as construction, purchase order, job order, term, and professional services. We selected a judgmental sample of 39 construction contracts which were

required to pay prevailing wages.

We also reviewed the payroll packages of 85 companies (36 contractors and 49 sub-contractors) for evidence that the Certifications had original signatures and corresponding payroll dates for the certified payrolls, and the payrolls contained the employees' names, addresses, the last four digits of the Social Security numbers, job titles, number of hours worked, and appropriate prevailing wage rate. We selected at least one payment record associated with a certified payroll package for each of 49 contracts, including 45 construction contracts, two purchase order contracts, one job order contract, and one professional services contract.

We conducted our 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

We provided a draft copy of this report to Authority officials for their review and formal comment. Their comments were considered in preparing this report and are attached in their entirety at the end of it. Officials generally concurred with our report's findings and recommendations and indicated they have taken several actions to address them.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chair of the Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

John F. Buyce, CPA, CIA, CFE, CGFM, Audit Director
Stephen Goss, CIA, CGFM, Audit Manager
Todd J. Seeberger, Audit Supervisor
Kathy Garceau, Examiner-in-Charge
Peter Carroll, Senior Examiner
Nancy Hobbs, Senior Examiner
Geary Sheeran, Senior Examiner
Marzie McCoy, Senior Editor

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments


DASNY

ANDREW M. CUOMO
Governor

ALFONSO L. CARNEY, JR.
Chair

GERRARD P. BUSHELL, Ph.D.
President & CEO

March 10, 2017

John Buyce
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 11th Floor
Albany, NY 12236

Dear Mr. Buyce:

In January 2016, the Office of the State Comptroller (OSC) began site work on an audit of DASNY's compliance with prevailing wage requirements on construction contracts for the period of January 1, 2014 through June 17, 2016. OSC audit team concluded site work and left DASNY in May 2016, returning briefly in June 2016 to review additional documentation.

OSC shared their preliminary audit findings in June 2016. DASNY provided several written responses to preliminary audit findings which appears to have been considered in preparation of this draft audit report issued on February 9, 2017. DASNY took into consideration some of OSC's earlier recommendations and in the time that has passed since the preliminary findings were presented, has taken several actions to address these as follows:

OSC Recommendation #1:

- *Ensure Authority project managers and/or field representatives periodically verify prevailing wage postings on job sites. Require verifications of wage postings to be documented.*
 - NYS Labor Law §220 subd. 3-a[a][ii] provides that it is the obligation of the contractors and subcontractors to post the prevailing wage information on the job site, and the DOL to monitor compliance with this obligation. To facilitate compliance, DASNY requires its Project Managers and Field Representatives to verify postings at the job site, and believes that job site postings are occurring in most cases. In cases where postings do not occur, it is likely because of physical limitations at some of DASNY's smaller project sites (e.g., lack of contractor or DASNY field office where the contractor can post signage visibly). In these cases, Project Managers and Field Representatives will work with the contractors to find alternate locations to post wage schedules, such as on a job box for tools or on a wall inside the work area.
 - In June 2016, the Managing Director of DASNY's Construction Division sent an email correspondence to all DASNY field site staff reminding them of field site signage requirements. Periodic reminders will be sent to field staff going forward.

OSC Recommendation #2:

- *Require Labor to provide the Authority with periodic reports which sufficiently detail the nature and results of the Investigator's monitoring efforts regarding Authority construction projects. Request and obtain adequate supporting documentation to ensure the Authority receives the services it pays for as prescribed by the Agreement.*

CORPORATE HEADQUARTERS
515 Broadway
Albany, NY 12207-2964

T 518-257-3000
F 518-257-3100

NEW YORK CITY OFFICE
One Penn Plaza, 52nd Floor
New York, NY 10119-0098

T 212-273-5000
F 212-273-5121

BUFFALO OFFICE
539 Franklin Street
Buffalo, NY 14202-1109

T 716-884-9780
F 716-884-9787

DORMITORY AUTHORITY STATE OF NEW YORK

**WE FINANCE, BUILD AND
DELIVER.**

www.dasny.org



Mr. John Buyce
March 10, 2017
Page 2 of 2

- Under existing law (NYS Labor Law §220 subd. [6], [7] and [8]), investigative jurisdiction for prevailing wage violations is vested exclusively in the NYS Department of Labor (DOL) and not DASNY. (The City Comptroller has jurisdiction over prevailing wage violations at City-owned projects.) To ensure that DOL has adequate resources to investigate prevailing wage claims at DASNY's construction sites statewide, DASNY and DOL have entered into an agreement to fund the cost of a dedicated DOL Inspector for prevailing wage matters. This approach respects both DOL's investigatory jurisdiction and statutory mandate to enforce prevailing wage requirements, as well as DASNY's need to ensure compliance, minimize delays and complete projects (to the extent practicable) on time and at an acceptable cost to the public.

With full recognition of DOL's exclusive jurisdiction in these matters, DASNY's Office of Internal Affairs manages this investigatory relationship with the DOL by maintaining contact with the DOL Investigator and his/her supervisor. As noted in the preliminary audit findings, this oversight includes a monthly reporting procedure to keep DASNY abreast of critical information. In accordance with the preliminary audit findings, DASNY has rewritten and negotiated changes in its contractual agreement with the DOL to provide for enhanced reporting in the form of regular audit reports. Changes to the agreement include the following under the "Enhanced Enforcement" section:

In addition, DOL will provide audit reports to DASNY on a regular basis, regarding activities of the dedicated DOL personnel assigned under this agreement. Those reports will be used to allow DASNY to determine, as provided in II above, whether DASNY funds have been used solely for the costs of employing appropriate personnel related to the program.

DASNY representatives have also personally met with their DOL counterparts to discuss increased communication and reporting going forward and DASNY and DOL look forward to enhanced communications in this area. DASNY and DOL intend to meet on a regular basis to discuss mutual issues of concern.

Should you have any questions or need any additional information, please contact:

Geoff Arnold
515 Broadway
Albany, NY 12207
(518) 257-3079
garnold@dasny.org

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerrard P. Bushell".

Gerrard P. Bushell
President

cc:
Alfonso L. Carney, Jr. (DASNY-Chair)
Michael T. Corrigan (DASNY)
Michael E. Cusack, Esq. (DASNY)
Kimberly J. Nadeau (DASNY)
Debra Pulenskey Drescher, Esq. (DASNY)
Kathy Ebert (DASNY)
Kathy Garceau (OSC)