

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Internal Audit of the Davis Bacon Labor Standard Act

Audit Report # 25-002

Executive Summary

The Office of Internal Audit (OIA) performed an audit of the Davis Bacon Labor Standard Act and its related activities. The purpose of this audit was to review, assess, and evaluate activities and processes related to monitoring of the Davis Bacon Labor Standard Act, and its compliance with applicable rules and regulations.

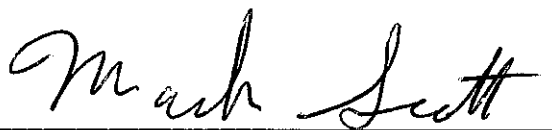
Based on our review and testing, the monitoring of Davis Bacon Labor Standards appears to be operating effectively at TDHCA in ensuring compliance with related rules and regulations. We identified some areas for potential improvement to efficiency of monitoring, as well as providing higher assurance on compliance with the Davis Bacon standards. Details of our recommendations are included in the report.

Observations and Recommendations

- OIA recommends that the MFDL staff document and retain proof of "Contractor eligibility verification" from SAM.gov for each contractor subject to DBRA.
- OIA recommends that the Compliance Monitoring section obtain and retain the sample documents that they review and test during each monitoring review for future Audit reviews.

Objective, Scope, and Methodology

Our scope for this audit included a review of applicable Texas Administrative Code (Title 10, Section § 2.401), relevant Federal Codes; 29 CFR Part 1, "Procedures for Predetermination of Wage Rates"; CFR 29 Part 4, "Labor Standards for Federal Service Contracts"; CFR 29 Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"; CFR 29 Part 6, "Rules for Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts", and we performed review and analysis of the current internal practices.



Mark Scott, CPA, CIA, CISA, CFE, MBA
Director, Internal Audit

8/15/25
Date Signed



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Board Members of the Texas Department of Housing and Community Affairs ("TDHCA")

RE: Internal Audit of the Davis Bacon Labor Standard Act

Dear Board Members:

This report presents the results of the Office of Internal Audit ("OIA") review of the "*Davis Bacon Labor Standards Act*" and its related activities at TDHCA. This audit was conducted in accordance with applicable audit standards and included objectives to review, assess, and evaluate activities and processes related to monitoring of the Davis Bacon Labor Standard Act, and its compliance with applicable rules and regulations.

The Davis Bacon Labor Standard act was included in the internal audit plan for FY 2025 due to its importance in ensuring wage equality in federally funded projects, as well as lack of any recent Internal audits. For this audit we reviewed the applicable sections of 29 CFR (Code of Federal Regulations), previous audit performed by HUD, Single Audit performed by CLA, and review of documents and information provided by staff and information available on TDHCA website.

This report is divided into the following sections:

- A. Overall Result
- B. Background
- C. Scope and Methodology
- D. Roles and Responsibilities
- E. Testing and Recommendations
- F. Other Audits

A. Overall Results

Based on our review and testing, the monitoring of Davis Bacon Labor Standards appears to be operating effectively at TDHCA in ensuring compliance with related rules and regulations. We identified some areas for potential improvement to efficiency of monitoring, as well as providing higher assurance on compliance with the Davis Bacon standards. The details of our recommendations are in later sections of the report.

B. Background

According to 29 CFR part 5, the term "Davis-Bacon Labor Standards" means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the *Copeland Act*, and the prevailing wage provisions. The Davis Bacon Act is a federal level stipulation that indicates that all workers involved with a government project are to be compensated appropriately according to their job description and relevant skills. Davis-Bacon wage rates apply to HUD-funded projects because of labor provisions contained in Federal Labor Standards Requirements in Housing and Community Development Programs (HUD.gov) such as the U.S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. Texas, as a recipient of funds related to these acts, must also comply with the Davis Bacon Act according to federal law.

48 CFR 22.403-2, Copeland Act;

The Copeland Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

In addition the Copeland Act, which complements the Davis-Bacon Act, requires contractors to furnish weekly statements of wages paid to employees. This requirement is implemented through regulations at 29 CFR Part 3 and contract clauses in 29 CFR Part 5.

The Davis-Bacon Act applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,500 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

29 CFR §1.5 (a) General Wage Determination;

A general wage determination contains, among other information, a list of wage and fringe benefit rates determined to be prevailing for various classifications of laborers or mechanics for specified type(s) of construction in a given area. The Department of Labor publishes general wage determination under the Davis-Bacon Act on the DOL-approved website.

29 CFR § 1.2, Prevailing wage;

The wage paid to the majority (more than 50%) of the laborers or mechanics in the classification on similar projects in the same area. If the same wage is not paid to a majority, the prevailing wage will be the wage paid to the greatest number, provided that such number constitutes at least 30% of the those employed. If no wage rate is paid to 30% percent or more, the prevailing wage will be the average of the wages paid to those employed in the classification, weighted by the total employed in the classification.

According to the Department of Labor:

- *Contractors must incorporate labor standards clauses and applicable wage determinations into their contracts, as mandated by the Davis Bacon and Related Act.*
- *The Contracting agency is responsible for ensuring these clauses are included in the prime contract, which includes all subcontract agreements.*
- *The U.S. Department of Labor (DOL) oversees the enforcement of these labor standards, ensuring that contractors meet prevailing wage rates and other labor requirements.*

The penalty increases for failure to pay overtime wage rate, at a rate not less than one and one-half times their basic rate. Agencies across the federal government must adjust penalties for inflation each year. The change affects the Contract Work Hours and Safety Standards Act (CWHSSA) under The Federal Civil Penalties Inflation Adjustment Act Improvements Act enacted in 2015. The law allows adjustments for inflation each year in January.

29 CFR § 4.114 (b), Liability of prime contractor;

When a contractor undertakes a contract subject to the ACT¹, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severally liable with any subcontractor for

¹ Davis Bacon Labor Standard Act

any underpayments on the part of a subcontractor which would constitute a violation of the prime contract.

C. Scope and Methodology

Our scope for this audit included a review of applicable Texas Administrative Code (Title 10, Section § 2.401), relevant Federal Codes; 29 CFR² Part 1, “Procedures for Predetermination of Wage Rates”; CFR 29 Part 4, “Labor Standards for Federal Service Contracts”; CFR 29 Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”; CFR 29 Part 6, “Rules for Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts”, and we performed review and analysis of the current internal practices.

D. Roles and Responsibilities

Texas Department of Housing and Community Affairs: At TDHCA all divisions that are funded by HUD funds are required to comply with the Davis Bacon Act. This includes the following programs: HOME, HOME-ARP, NSP, and PRA. The Subrecipient Monitoring section of the Compliance division is responsible for conducting desk and on-site reviews to ensure that projects are in compliance with relevant acts. TDHCA designed the 811 rental assistance programs to state Rental Assistant can only be provided if a unit is already rehabbed and does not require construction. Because of this, TDHCA 811 program is not subject to Davis Bacon act.

Labor Standard Specialist (LSS): TDHCA staff is informed of the appointment of LSO for each project / construction firm prior to approval of initial disbursement of federal fund, and issuance of Notice to Proceed (NTP). LSS issues NTP that incorporates the DOL-WHD-GWD³ Prevailing wage mandates applicable to the project and authorizes start of construction activity. The LSS is also responsible for reviewing and approving TDHCA Final Wage Compliance Report associated with the Department’s labor standards retainage release requirements.

Prime Contractor: This term refers to any person, or entity, that enters into a contract with the Department. The contractor or subcontractor has an affirmative obligation to ensure that its pay practices are in compliance with the Davis Bacon Act labor standards, including verification of subcontractors and lower-tier contractors on the SAM.gov prior to executing any construction contracts.

Labor Standard Officer (LSO): The primary individual responsible for overseeing project labor standards and records compliance mandates at the contractor’s level. The LSO is responsible for accuracy of documents prior to sending completed documents to THDA Labor Standards Specialist (LSS) for conditional approval. This includes weekly reviews of WH-347 Payroll forms

² Codes of Federal Regulations

³ Department of Labor – Wage and Hour Division – General Wage Determination

received from Prime contractors to ensure its compliance with DBRA mandates, conducting on-site interviews with workers in multiple classifications throughout the project construction phase, and documenting and processing owed overtime pay violations and enforcing liquidated damage payments. Any identified liquidated damages are collected by LSO and sent to TDHCA via check, who in turn will send it to HUD.

The LSO cannot be an employee of the Construction company, or its affiliates

Laborer / Participants: The participants in the Davis Bacon Act regulations are all workers employed on federally funded projects by contractors and subcontractors. **According to 29 CFR §1.2;** *“Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by assistance from the United States through loan, grant, loan guarantee or insurance, or otherwise, is employed regardless of any contractual relationship alleged to exist between the contractor and such person”.*

E. Testing

As part of our review of Davis Bacon Related Acts we requested from the Multifamily division a sample of completed projects that are subject to DBRA to review and test for completeness and compliance with applicable rules and standards. However, our review was limited due to the fact that there is two years gap between past awards. The MFDL program released HOME funds in FY 2022 and then again in FY 2024. The two-year lapse was due to a rather substantial increase to the Department’s National Housing Trust Fund (NHTF) grant which needed to be committed to projects by strict deadlines. This resulted in a smaller amount of HOME transactions from FY 2023 and onward. Consequently, a good portion of FY 2022 deals have still not yet had their final draw, and the DBRA information is not complete or available to review.

We received records of three deals that were closed in 2024 to review and test. These deals have not yet had their final draws and therefore did not have *“Final Wage Compliance report”* at this point. We were also unable to verify *“Contractor’s Eligibility”* for any of the contractors on file due to lack of records. This issue, and recommendation related to this issue, are included in the following section.

F. Prior Audits, and recommendations

The Texas Department of Housing and Community Affairs is subject to a yearly Single Audit conducted by a contracted external auditing agency. This Single Audit includes the Davis Bacon Act, among other federal acts. The latest audit was conducted by the external audit firm, Clifton Larson and Associates (CLA) in 2025, and involved evaluation of Davis Bacon related activities along the following guidelines: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; equipment and real property management; matching, level of effort, earmarking; period of performance; procurement suspension & debarment; program income; reporting; subrecipient monitoring; and special tests and provisions.

During the Single Audit, a sample of projects was taken to ensure that they complied with the Davis Bacon Act. No findings were reported by CLA.

In fiscal year 2017, The Department of Housing and Urban Development (HUD), Office of Davis Bacon and Labor Standards (DBLS) conducted an on-site review of TDHCA. The review was to evaluate the Department's Federal Labor standards administration and enforcement of applicable Federal laws. The scope of the review focused on examining critical elements for labor standards such as the Department's organizational structure, monitoring procedures, and role of the Department's labor specialist.

The HUD report stated that overall TDHCA is doing an adequate job with administration and enforcement of Federal Labor Standards. It also stated that the review revealed some weaknesses in the administration and enforcement of Federal Labor Standards, and that improvements in the area of monitoring can be made. The issues identified during HUD's review were:

- *Unable to provide the verification of contractor eligibility prior to contract award for the selected sample.*
- *Need to ensure compliance with overtime requirements.*
- *Work Classification not listed on wage decision.*
- *Need to ensure employee interview forms are reviewed and signed.*

OIA followed up on these items and was able to confirm that the "verification of contractor eligibility prior to contract award" was transferred to Multifamily division, as was provided in the Management response at the time. This process is now part of the application procedure and is verified during the application review and scoring phase. However, Multifamily division does not retain any proof of the verification on file, and in some cases relies on the verbal confirmations from other divisions and staff. OIA was not able to verify this requirement for the selected sample.

Observation Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
002-001	OIA recommends that the MFDL staff document and retain proof of "Contractor eligibility verification" from SAM.gov for each contractor subject to DBRA.	Immediate	Multifamily

Management Response

Management agrees with this recommendation.

OIA was not able to verify the remaining three items from HUD's recommendations which fall under the Compliance Monitoring section of Compliance division. The monitoring section does not keep records of documents and samples reviewed during their monitoring reviews unless they're related to a finding.

Observation Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
002-002	OIA recommends that the Compliance Monitoring section obtain and retain the sample documents that they review and test during each monitoring review for future Audit reviews.	8/15/2025	CMSM

Management Response

Compliance Subrecipient Monitoring (CMSM) accepts the observation. CMSM staff were provided quarterly assignments for the last quarter of fiscal year 2025 on June 4, 2025. Four multifamily contracts were assigned with Davis Bacon for review. For these assignments and going forward, CMSM will retain all review documentation for future audit reviews.

We extend our appreciation staff and management of Multifamily, Compliance Monitoring, HOME-ARP, and Community Action divisions for their cooperation and assistance during the course of this audit.

Sincerely,



Mark Scott, CPA, CIA, CISA, CFE, MBA
Internal Audit Director

MS/NS