

October 7, 2013

David Dise  
Director, Department of General Services  
Montgomery County Government  
101 Monroe Street, 9<sup>th</sup> Floor  
Rockville MD 20850

Dear Director Dise,

The purpose of this letter is to report to you the results of the review performed by Cherry Bekaert LLP under contract with the Office of Internal Audit (MCIA) to assess your department's implementation of recommendations from the *2006 Independent Accountant's Report on Applying Agreed-Upon Procedures for Evaluating the County's Implementation and Operation of the Wage Requirements Law*. This review was performed in conjunction with the *2013 Audit of Wage Requirement Compliance* we performed at your request based on allegations received by your Office of Business Relations and Compliance (OBRC). The results of that audit appear in a separately issued report. The Department of General Services (DGS) reviewed a draft of this document and advised us that it agreed with the document's factual presentation and provided some additional information, which we have incorporated in the document as necessary.

This review was performed in accordance with consulting standards established by the American Institute of Certified Public Accountants and generally accepted government auditing standards established by the Government Accountability Office as appropriate. Our proposed procedures were reviewed and approved in advance by Montgomery County Internal Audit (MCIA). Interviews, documentation review, and field work were conducted from October 2012 to April 2013.

In 2006, Clifton Gunderson LLP conducted an attestation engagement (agreed-upon procedures) to evaluate the County's implementation and operation of the Wage Requirements Law on behalf of the Montgomery County Department of Finance, Internal Audit Section. The report contained 10 findings and 10 recommendations. The recommendations were addressed to the Office of Procurement for response and action. In 2006, when the original audit engagement was performed; neither DGS nor OBRC, in their current form and structure, existed. However subsequently, both entities provided responses regarding the implementation status of the report recommendations. The Attachment contains the details of the findings, recommendations and management responses.

We conducted this review on management's progress in addressing the report recommendations through direct inquiry with OBRC and Office of Procurement staff and management. Additional validation was performed through review of documents and information on the DGS section of the County's website and correspondence with OBRC and Office of Procurement employees.

As a result of our discussions, observation and validation of information, we found the Office of Procurement and OBRC have made adequate progress in implementing seven of the 10 report recommendations. At the time of this review DGS and OBRC are in the process of implementing two of the three remaining recommendations and the actions taken to date were not reviewed for adequacy. We noted that the other recommendation has not had any action taken on implementation. The details associated with each of these three report recommendations are presented below:

Finding	Recommendation	Original Response in 2006	Implementation Status and Comment by OBRC
1	<ul style="list-style-type: none"> <li>• Verify covered employer's status annually</li> <li>• Monitor changes in commodity codes</li> <li>• Obtain annual recertifications from employers of their Wage Requirements Law Status</li> </ul>	The Office does not dispute the consultant's recommendations	<ul style="list-style-type: none"> <li>• <i>No Implementation</i> : It is very rare that there are changes to the commodity codes or employer status</li> <li>• <i>OBRC comments</i>: <ul style="list-style-type: none"> <li>○ OBRC will review and make necessary adjustments on Living Wage applicable codes when Procurement updates the NIGP classification Codes.</li> <li>○ The Law does not have a recertification requirement. OBRC's current process is that the County recognizes the original certification for the duration of the contract. However, OBRC will add language in the Living Wage Certification form requiring the contractor to notify OBRC when the covered employer's status is changed (i.e., changed from a non-profit company to a for-profit company).</li> </ul> </li> </ul>
7	Recommended the County expand their training and guidance to assist contract administrators with compliance to the Wage Requirements Law.	The Office of Procurement agrees that a comprehensive program or written guidance would be helpful for contract administrators.	<i>Implementation in progress</i> : During our review, we determined that the Office of Procurement was in the process of conducting a pilot of a new Contract Administration (CA) training program to include training on the wage requirement. Procurement and OBRC also work together to train CAs in the CA forums.
10	The County should consider developing the best practices that have not been fully implemented.	The Office of Procurement does not agree the cited government jurisdictions are comparably sized and noted only 5 out of the 10 have AAA bond ratings. Also, the wage requirements vary	<i>Implementation in progress</i> : Wage law compliance training for Contract Administrators (see comment for finding number 7).

Finding	Recommendation	Original Response in 2006	Implementation Status and Comment by OBRC
		greatly between jurisdictions. The office believes many of the consultant's "best practices" are worthy of consideration, and will review for inclusion in policies and procedures.	

We found the management rationale for not implementing the recommendations for finding number 1 is reasonable and does not warrant further action. We concur that the remote likelihood of changes in commodity codes or employer status occurring makes the implementation of robust monitoring procedures to be excessive at this time, but feel the actions describe by management regarding how it would address such changes in the future are adequate.

However we find the current implementation status of findings number 7 and 10 to be significant as they deal with internal training of contract administrators who, with a responsibility of monitoring contractor performance, should have full knowledge and understanding of the wage law requirements for the contractors they are monitoring. Therefore, we offer the following recommendation related to findings number 7 and 10.

**We recommend that you**

**Ensure the redeveloped contract administrator training contains specific training regarding the compliance requirements associated with the Wage Law and processes or strategies for monitoring contractor compliance with the law.**

Please do not hesitate to contact us if you would like more information on our review of the implementation of recommendations from the *2006 Independent Accountant's Report on Applying Agreed-Upon Procedures for Evaluating the County's Implementation and Operation of the Wage Requirements Law*.

Respectfully submitted,

Cherry Bekaert LLP



Attachment

Prior Audit Findings and Recommendations with Responses and Current Status from *Independent Accountant’s Report on Applying Agreed-Upon Procedures for Evaluating the County’s Implementation and Operation of the Wage Requirement Law*

	Finding	Recommendation	Original Response	Current Status Based on Follow Up Inquiry (I) and/or Observations /Validation (O/V)
Finding #1	The Office of Procurement does not provide effective oversight in selected areas. The Office of Procurement does not verify if a contractor’s Wage Requirements Law Status has changed subsequent to initial certification, does not require that the employer certify that their Notice to Employees of the Wage Requirement Poster is properly displayed after the first contact period, and does not monitor for changes in commodity codes.	Expand documentation: 1.) Document all policies and procedures for compliance and monitoring of compliance. 2.) Verify covered employer’s status annually 3.) Monitor changes in commodity codes 4.) Obtain annual re-certifications from employers of their Wage Requirements Law Status 5.) Conduct random inspections of contractor’s premises to verify notices are posted.	The Office does not dispute the consultant’s recommendations.	1.) Procedures have been updated and policies have been posted on the County’s website (O/V) 2.) – 4.) Per OBRC staff due to the rarity in changes in commodity codes and employer status no procedures have been implemented to perform annual reviews at this time (I). 5.) Performance of inspections is part of the OBRC department responsibility.(I)

	Finding	Recommendation	Original Response	Current Status Based on Follow Up Inquiry (I) and/or Observations /Validation (O/V)
Finding #2	The Office of Procurement has not fully documented policies and procedures on the Wage Requirements Law.	The Office of Procurement should fully document their policies and procedures for complying with, and monitoring, the Wage Requirements Law and establish procedures to verify compliance with County requirements. Procedures should be implemented to update the policies and procedures.	The Office of Procurement agrees and was in the process of drafting a package to distribute in FY08	Procedures have been updated and policies have been posted on the County's website.(O/V)
Finding #3	The County did not verify that a bid proposal to provide services to the County included specifications on how the contractor would comply with the wage requirements or that the proposal included sufficient funds to meet the wage requirements.	The Office of Procurement should perform a documented review of the proposed wage rates for reasonableness to ensure that the contractor can comply with the Wage Requirements Law	Office of Procurement contacts vendors when they propose a labor rate less than required Wage Law rate and requires them to certify they are in compliance with Wage Requirements Law. Office of Procurement will now require the vendor to indicate how it will comply with the law, and follow-up with the vendor throughout the contract term.	Office of Procurement now requires vendors complete and submit the Wage Requirements Certification Form that confirms that the contractor will be paying employees in accordance to the law as part of proposal documents. (I). The OBRC receives the payroll data contractors are required to submit and has the responsibility to follow up with contractors to ensure compliance with law.(I)

	Finding	Recommendation	Original Response	Current Status Based on Follow Up Inquiry (I) and/or Observations /Validation (O/V)
			Office of Procurement now requires contractors to submit payroll data on employees whom the Law applies.	
Finding #4	The Office of Procurement was unable to provide a list of contracts and/or contractors with detailed information on each contract.	The Office of Procurement should maintain a database of all contracts with detailed information on each contract.	The Office of Procurement agrees that a more comprehensive and detailed system for recording and reporting contract activity related to the Wage Requirements Law would be beneficial	The Office of Procurement Implemented database for contracts (I); which can be accessed through the department section of the County web site (O/V). OBRC accesses the database for contracts subject to the wage law to confirm contractors to monitor (I).
Finding #5	The County does not provide user departments with comprehensive written policies and procedures to comply with the Wage Requirements Law	The County should establish comprehensive written policies and procedures for user departments to monitor compliance with the Wage Requirements Law.	The Office of Procurement has the responsibility to monitor Wage Requirements Law compliance and will seek departmental support as needed to do so.	OBRC monitors compliance by performing department duties such as receiving and reviewing quarterly payroll reports from vendors and following up on complaints of non-compliance.(I) See rec#1 regarding the inclusion of updated

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				policies and procedures (O/V) on the County's website.
Finding #6	The CAO does not report all information required under the Wage Requirements Law. There is no computation of the number of contracts and subcontracts with minority-owned businesses that are subject to the requirements of the law and how that number has changed since the year before those requirements took effect.	The Office of Procurement should prepare the report for the CAO with all required information, in accordance with the Law.	The annual report has not previously included "minority-owned business" participation data. This has been corrected.	The Living Wage Annual Report for 2006 was corrected at the time the original internal audit report was issued in 2006 (I) and requested information has been included in the FY11 Report (O/V).
Finding #7	The Office of Procurement has not developed a comprehensive training program or written guidance for contract administrators to address the requirements of the law.	Recommended the County expand their training and guidance to assist contract administrators with compliance to the Wage Requirements Law.	The Office of Procurement agrees that a comprehensive program or written guidance would be helpful for contract administrators.	This finding is open; no guidance written has been developed at the time of this audit follow up (I) <sup>1</sup>

<sup>1</sup> A pilot of the redesigned Contractor Administration training program was conducted in April 2013.

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Finding #8	The Office of Procurement has established a database to track complaints, but does not have comprehensive policies on the use of the database.	Recommend the Office of Procurement establish procedures to document and investigate all complaints.	Law makes no specific delegation as to responsibility for investigation of complaints. The Office of Procurement will establish procedures to document and investigate complaints.	OBRC has responsibility to follow up on complaints OBRC has written procedures for investigating complaints (O/V) complaints.
Finding #9	Two covered employees audited had inadequate time keeping records to demonstrate compliance to the Wage Requirements Law.	Recommend Office of Procurement provide training and guidance to covered contractors so they understand the record keeping requirements for the Wage Requirements Law.	The Office of Procurement agrees that contractors should understand the reporting requirements, but does not believe it to be good practice to provide training or guidance in matters of routine business practices.	Procurement guidelines require contractors to complete and submit the Wage Law Certification Form that stipulates that they understand the law requirements including reporting (O/V) OBRC noted that it hosts seminars for vendors on all OBRC compliance programs, including the Wage Requirements Law and OBRC staff attend pre-bid conferences and address all OBRC compliance programs requirements, including the Wage Requirements

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				Law as part of those pre-bid conferences.(I)
Finding #10	<p>Montgomery County has not implemented some of the “best practices” identified through interviews with ten comparably sized governments with AAA bond ratings and wage requirements.</p> <ol style="list-style-type: none"> <li>1.) A separate unit within the Office of Procurement to monitor and enforce compliance with the Wage Requirements Law</li> <li>2.) Detailed quarterly reporting by all employers</li> <li>3.) Periodic certifications by contractors and their employees</li> <li>4.) A new directive on the wage requirements to</li> </ol>	<p>The County should consider developing the best practices that have not been fully implemented.</p>	<p>The Office of Procurement does not agree the cited government jurisdictions are comparably sized and noted only 5 out of the 10 have AAA bond ratings. Also, the wage requirements vary greatly between jurisdictions. The office believes many of the consultant’s “best practices” are worthy of consideration, and will review for inclusion in policies and procedures.</p>	<p>OBRC has addressed the majority of these items; number 11 however, remains an open item which we believe should be addressed in a timely manner (I, O/V).</p> <p>For Item number 14, per communication with the County Attorney’s Office there are several remedies available to County in instances of contractor’s statutory violation or contract breach, resulting from a contractor’s non-compliance with the Wage Law that could result in fines. (I)</p>

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	<p>include responsibility for compliance, enforcement, and reporting procedures</p> <p>5.) Employer Reporting Requirements (initial and continuing)</p> <p>6.) Employer Certification Requirements</p> <p>7.) Copies of Forms, Posters, Certification Letters</p> <p>8.) Current Complaint Procedures</p> <p>9.) Provisions of the Law in Procurement Guide</p> <p>10.) Provisions of the Law in the Procurement Regulations</p> <p>11.) Training of Contract Administrators</p> <p>12.) Procedures</p>			

	Finding	Recommendation	Original Response	Current Status Based on Follow Up Inquiry (I) and/or Observations /Validation (O/V)
	<p>to Monitor Employer Compliance</p> <p>13.) Procedures to Inspect Employers for Compliance</p> <p>14.) Penalties when Contractors do not Comply with the Law</p> <p>15.) Procedures to Monitor the Status of "Exempt" Employers</p>			