


APPENDIX B: WHD'S RESPONSE TO THE REPORT

U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210



MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General

FROM: KEITH SONDERLING 
Acting Administrator, Wage and Hour Division

SUBJECT: Response to the Office of Inspector General's Draft Report: Better Strategies Are Needed To Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates

The Wage and Hour Division ("WHD") appreciates the opportunity to respond to the March 1, 2019 draft report of the Office of Inspector General ("OIG") titled *Better Strategies Are Needed To Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*.¹ The report provides eight recommendations. WHD's responses to these recommendations are set forth below. In a separate attachment, we are providing clarification on specific findings and conclusions contained in the report.

Recommendation 1: Continue efforts to reduce the amount of time to complete DBA wage surveys and identify additional strategies to improve timeliness, such as the use of statistical sampling or a risk-based approach.

Response: WHD agrees with the goal of improving survey timeliness. WHD appreciates OIG's recognition that WHD has successfully reduced the amount of time it takes to complete a wage survey by more than 50% since 2002. Nevertheless, WHD is working to improve its current business processes and technological capabilities to reduce the overall time it takes WHD to execute a survey and will continue those efforts. WHD also notes that survey timeliness depends upon both participant response rates and the quality of data that participants submit to WHD through the WD-10 form. WHD recognizes that Davis-Bacon Act ("DBA") wage determinations must be as timely and accurate as possible in order for the agency to publish wage rates that are truly reflective of the rates that actually prevail in a designated area and that are useful to contracting parties. Accordingly, WHD appreciates many of the conclusions and recommendations set forth in OIG's report and will consider and, if appropriate, implement those recommendations as part of the agency's continued dedication to publishing high-quality, robust wage determinations in a timely manner. Importantly, however, WHD must balance timeliness with quality and would need to carefully consider whether statistical sampling would have a negative impact on survey quality.

¹ WHD has prepared this response based on the draft report that WHD received from OIG on March 1, 2019, as well as technical corrections to that draft communicated by OIG on March 18, 2019. Accordingly, WHD's references to specific page numbers and quotations of certain language set forth in the draft report may not precisely mirror the pagination and verbiage used in the final report.

Recommendation 2: Develop and implement a risk-based strategy to manage rates over 10 years old.

Response: WHD agrees with this recommendation. WHD will manage DBA wage rates that are more than ten years old through survey planning and by implementing new strategies to address such wage determinations. In determining where to conduct DBA wage surveys, WHD considers multiple factors, including the age of existing DBA wage rates, the likelihood that WHD will be able to meet survey sufficiency standards given the quantity of construction that has occurred in a particular geographic area, the number of workers impacted, projected federal spending relative to other localities and types of construction, and the willingness of our stakeholders to participate. WHD consults multiple external data sources to evaluate these factors and prioritize accordingly. As part of its survey planning process, WHD will continue to improve its planning and prioritization using the best available information. Moreover, WHD will develop and implement a new strategy to identify DBA wage determinations that are more than ten years old and are unlikely to be in current use by contracting parties. WHD will then adopt a new risk-based approach to managing such wage determinations, such as removing those wage determinations from Wage Determinations OnLine (WDOL) or classifying the wage determinations in a manner that will minimize confusion or any “negative perception” that OIG believes may result when the public views such aged information on the website.

Recommendation 3: Consult with BLS and evaluate alternative methods to update wage rates such as the Consumer Price Index, and Occupational Employment Survey data.

Response: WHD agrees with this recommendation. As noted in OIG’s report, WHD has met with the Bureau of Labor Statistics (“BLS”) in the past to explore the use of Occupational Employment Statistics (“OES”) survey data in support of the Davis-Bacon survey program. WHD believes it would at least need to engage in notice-and-comment rulemaking pursuant to the Administrative Procedure Act before it could simply adopt OES wage data. WHD will continue to maintain a relationship with federal partners, such as BLS and the Census Bureau (“Census”), for the purpose of periodically assessing whether it is legally permissible and programmatically appropriate to use OES or other data for purposes of improving the survey process.

As part of its efforts to reevaluate its contract services, WHD awarded a contract to support the Davis-Bacon wage survey program in late September of 2016 to Eastern Research Group (“ERG”), an organization with more than 30 years’ experience providing economic and statistical analysis. WHD will continue to engage with this contract partner to provide WHD with objective feedback on its survey process, including the potential for using OES data or other alternative methods such as the Consumer Price Index (“CPI”), to inform the updating of wage rates under the Davis-Bacon survey program.

Recommendation 4: WHD should determine whether it would be statutorily permissible and programmatically appropriate to adopt state or local wage rates other than for highway construction.

Response: WHD agrees with this recommendation. WHD, in consultation with the Department of Labor (“DOL”)’s Office of the Solicitor, will determine whether the Davis-Bacon Act presents any impediments to the agency’s adoption of state or local wage rates outside the highway context. If deemed legally permissible, WHD will then consider whether it would be programmatically appropriate to seek regulatory changes permitting the adoption of such rates. WHD will discuss any such regulatory proposals with DOL leadership in the normal course of developing the agency’s regulatory priorities and agenda.

Recommendation 5: Continue efforts to identify new strategies to increase contractors’ participation in order to obtain more relevant wage data.

Response: WHD agrees with the recommendation and thanks OIG for acknowledging WHD’s recent efforts to increase contractors’ voluntary participation in the survey process. In the course of a typical survey, WHD makes multiple mailings and follow-up calls to interested parties and stakeholders. As OIG recognizes in its report, WHD has worked to increase participation by publishing press releases announcing surveys; conducting pre-survey briefings with international and local unions and contractors; conducting mid-survey briefings; contracting for services to promote participation; and creating an internet platform for interested parties to submit WD-10 wage reports electronically. WHD also announces its survey plans via All Agency Memoranda (“AAMs”), which contracting agencies and the general public can access on Wage Determinations OnLine (WDOL). WHD will continue these efforts and will work to identify additional strategies to increase contractors’ participation, such as conducting additional outreach events and developing additional fact sheets and tools for stakeholders that communicate the importance of survey participation and best practices for submitting data to WHD.

Recommendation 6: Develop performance goals and measures to gauge and improve the quality of DBA prevailing wage rates, including the accuracy of information reported in WD-10s.

Response: WHD agrees with the recommendation. The quality of DBA wage determinations depends upon both participant response rates and the quality of data that participants submit to WHD through the WD-10 form. DBA wage determinations are inherently more useful to contracting parties and of a higher quality when they include more classifications and when they contain rates that are calculated at the county or group level rather than at a state level because such calculations more accurately reflect local conditions. WHD currently measures the percent of building, heavy, and residential wage classifications published at the county or group level. WHD will continue to set targets to improve agency performance on this measure. For the FY 2020 planning cycle, WHD will also develop additional qualitative milestones or quantitative measures to encourage further improvements in wage determination quality.

Recommendation 7: Validate the accuracy of documentation that supported the Painter/Spray wage rate for the Kansas Heavy Survey and if warranted take necessary actions to remove the job classification from applicable wage determinations. Likewise, apply these actions to other surveys in which the documentation was used.

Response: As OIG correctly recognizes, it is contrary to WHD policy to publish DBA wage rates based on data received from only one contractor. OIG's identification of a single instance in which WHD allegedly relied on wage data from only one contractor to publish a prevailing wage rate is still under review, and WHD therefore has not yet determined conclusively that its policy was not followed in this instance. If WHD concludes that an error in fact occurred, WHD will correct the isolated error promptly by removing the classification and wage rate at issue from all wage determinations on which they appear. WHD appreciates that OIG has alerted the agency to this potential error and will continue to review the matter carefully.

Recommendation 8: Seek regulatory changes if necessary for implementing any of these recommendations.

Response: WHD agrees in part with this recommendation. Specifically, to the extent that WHD has agreed with an OIG recommendation set forth in this report and determines that revisions to the DBA regulations are both necessary to effectuate that recommendation and programmatically appropriate, WHD will discuss any such regulatory proposals with DOL leadership in the normal course of developing the agency's regulatory priorities and agenda.

Thank you again for the opportunity to comment on this report.

Attachment

cc: Patricia Davidson
Deputy Administrator for Program Operations

Mark Watson
Acting Assistant Administrator for Government Contracts

Michael Kravitz
Acting Assistant Administrator for Planning, Performance Evaluation and Communications

Sara Johnson
Director, Division of Strategic Planning and Performance

Barbara Brown
WHD Audit Liaison

Attachment**WHD SUPPLEMENTAL RESPONSE TO DRAFT OIG REPORT NO. 04-19-001-15-001,
BETTER STRATEGIES ARE NEEDED TO IMPROVE THE TIMELINESS AND
ACCURACY OF DAVIS-BACON ACT PREVAILING WAGE RATES**

WHD appreciates the opportunity to review and respond to OIG’s March 2019 draft audit report regarding the Davis-Bacon Act wage determination program. The following supplemental response provides clarification with respect to some of the findings and conclusions presented in OIG’s report. Because OIG’s audit reviewed the entire DBA wage determination program, the findings and conclusions set forth in the report address many different aspects of the program, ranging from the conducting of wage surveys to the calculating of wage rates to the publishing of wage determinations. To help place OIG’s assertions and recommendations in context, WHD is also providing a brief overview of WHD’s administration of the DBA wage determination program.

Overview of the Davis-Bacon Prevailing Wage Survey and Determination Process

General Principles: The Davis-Bacon Act requires the Secretary of Labor (“Secretary”) to determine minimum wage and fringe benefit rates for laborers and mechanics employed on Federal contracts for construction, alteration, or repair of public buildings and public works. *See* 40 U.S.C. § 3142. These minimum wages are based on the wages that the Secretary “determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed.” 40 U.S.C. § 3142(b). The Act’s implementing regulations establish that the prevailing wage shall be the wage paid to the majority (greater than 50%) of the workers in the classification on similar projects in the area during the relevant period. *See* 29 C.F.R. § 1.2(a)(1). If the same wage is not paid to a majority of workers in the classification, then the prevailing wage is the weighted average wage rate. *Id.*

Conducting Wage Surveys: Davis-Bacon prevailing wage rates are derived from survey information that responding contractors and other interested parties voluntarily provide. *See* 29 C.F.R. §§ 1.1-1.7. WHD conducts Davis-Bacon prevailing wage surveys in accordance with the relevant guidelines established by the Government Accountability Office (“GAO”) for compiling wage survey data and with WHD’s own guidance published in its *Davis-Bacon Construction Wage Determinations Manual of Operations* (1986) (“*Manual of Operations*”) and *Prevailing Wage Resource Book* (2015), available at <https://www.dol.gov/whd/govcontracts/pwrb/toc.htm>. In conducting wage surveys, WHD solicits and accepts information from all interested parties. *See* 29 C.F.R. § 1.3(a). WHD’s long-standing procedures provide that “[w]hen a survey is started, national and local interested parties are notified of the survey, its boundaries, time frame, and cutoff date by letter.” *Prevailing Wage Resource Book*, Tab 5 at 4. This survey notification letter to interested parties “requests their participation by facilitating the survey briefing process, encouraging contractors/members to participate in the survey . . . through the submission of wage data.” *Id.* WHD also engages in follow-up requests for data, ensuring that a significant number of potential respondents have been contacted and provided an opportunity to participate in the survey process. *Id.* In conducting follow-up activities, WHD similarly applies its efforts

equally to the entire universe of non-respondents in order to avoid introducing statistical bias into the process.

Because participation in the wage surveys conducted under the Act is voluntary, WHD lacks authority to compel the submission of wage data. See 29 C.F.R. §§ 1.3(a), (c). If an entity fails to respond to the survey, its wage rates cannot be considered in determining the prevailing wage rate. The ARB has recognized that it “may be very difficult to discern the wage paid to every relevant laborer in the relevant labor pool,” and that the regulations must be construed “to require that the Administrator make a reasonable effort and use reasonable discretion to identify the relevant laborers and ultimately publish a realistic prevailing wage.” *In re Road Sprinkler Fitters Local Union No. 669*, ARB Case No. 10-123, 2012 WL 2673228, at *4 (ARB June 20, 2012).

Calculating Prevailing Wage Rates: In calculating wage rates based on the survey data received, WHD follows several important and well-established policies. First, in order for WHD to publish a wage rate for a classification, the data for that classification must generally meet certain sufficiency requirements. Currently, the survey data for a classification generally meets WHD’s sufficiency requirement if it includes wage information for at least six similarly classified employees paid by at least three contractors. In narrow circumstances where WHD determines that the sample size of contractors and workers is sufficiently small that it is necessary to use a three-worker/two-contractor standard in order to ensure WHD can publish a survey rather than retain the prior, old survey rates, WHD will utilize that lower survey sufficiency standard. Second, in compiling data for residential and building wage determinations, WHD cannot use data from Federal or federally assisted projects “unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data.” 29 C.F.R. § 1.3(d). Third, WHD adheres to the regulatory principle that the county is generally the appropriate geographic unit for data collection, although data may be derived from groups of counties in some situations, as described below. See 29 C.F.R. § 1.7(a), (b). Finally, data received from metropolitan and rural counties cannot be combined. See 29 C.F.R. § 1.7(b).²

In accordance with these principles, WHD first attempts to calculate a prevailing wage based on private project survey data at the county level. See 29 C.F.R. § 1.7(a); *Manual of Operations* at 38; *Chesapeake Housing*, 2013 WL 5872049, at *4.³ If there is insufficient private survey data for a particular classification in that county, then WHD considers survey data from Federal

² If a county is located in a Metropolitan Statistical Area (“MSA”) as designated by the Office of Management and Budget (“OMB”), then it is classified as a metropolitan county for purposes of the Act. See *In re Coalition for Chesapeake Housing Development*, ARB Case No. 12-010, 2013 WL 5872049, at *4 (ARB Sept. 25, 2013).

³ This paragraph and the next describe the rate-setting process for building and residential construction wage determinations. The process for WHD’s surveys of heavy and highway construction is identical except that WHD does not first attempt to use only private project survey data, but rather always considers such data in tandem with data for projects subject to DBA prevailing wage rates. See 29 C.F.R. § 1.3(d).

projects if such data is available. If the combined Federal and non-federal survey data received from a particular county is still insufficient to establish a prevailing wage rate for a classification, then data from surrounding counties may be used, provided that data from metropolitan and rural counties is not combined. See 29 C.F.R. § 1.7(b); *Manual of Operations* at 38-39; *Chesapeake Housing*, 2013 WL 5872049, at *7.

In considering survey data from surrounding counties, WHD first expands its calculation from the county alone to a group of counties. For metropolitan counties, WHD expands its calculation from the county to the other counties located in the same MSA, as determined by OMB. If private survey data from the established county group is still insufficient, then WHD will include Federal project data from all the counties in the group. If both private and Federal data for an established county group is still insufficient to determine a prevailing wage rate, then WHD may expand to a “supergroup” of counties or even to the statewide level. See *Chesapeake Housing*, 2013 WL 5872049, at *6 (concluding that “the use of wage data from a super group is a permissible exercise of the broad discretion granted the WHD under the statute and regulations” and that “even the use of statewide data is permissible”). WHD only expands data to these levels, however, for classifications that have been designated as “key” crafts. See *Prevailing Wage Resource Book*, Tab 5 at 6.

WHD’s Response to OIG Audit Report

Executive Summary: As indicated by the title of its report, OIG makes a number of findings and recommendations regarding both the need to improve the “timeliness” of DBA prevailing wage rates and the need to improve the “accuracy” of these rates. WHD recognizes that DBA wage determinations must be as timely and accurate as possible in order for the agency to publish wage rates that are reflective of the rates that prevail in a designated area and that are useful to contracting parties. Accordingly, WHD appreciates many of the conclusions and recommendations set forth in OIG’s report and will consider and, if appropriate, implement those suggestions as part of the agency’s continued dedication to publishing high-quality, robust wage determinations in a timely manner.

As a threshold matter, however, WHD notes that a careful balancing is required to ensure that the goal of timeliness does not undermine the quality of DBA wage determinations. To that end, some of OIG’s conclusions regarding the accuracy of DBA wage determinations may be in tension, if not outright conflict, with other OIG recommendations regarding the timeliness of such determinations. For example, OIG suggests on pp. 13-14 of its report that WHD should increasingly utilize the resource-intensive and time-consuming onsite verification process to reduce the number of errors that OIG believes may exist in the wage data collected by WHD. At the same time, however, OIG repeatedly urges WHD to more expeditiously conduct wage surveys and publish new determinations, *see, e.g.*, pp. 7-8. While both of these goals are laudable, it may be difficult to achieve both objectives, particularly with limited agency resources.

WHD responds to certain of the more specific assertions and conclusions reached by OIG for each of these two broad topics below:

OIG Findings and Conclusions Regarding the Timeliness of DBA Wage Determinations

- **OIG Determination (p. 3 & passim):** “In 2016, WHD reported to Congress that the time to complete wage surveys had decreased from an average of 5-7 years in 2002 to 2.4 years in 2015. This is consistent with our analysis that shows WHD took an average of 2.6 years to complete 9 of the 10 surveys we sampled (1 survey was cancelled).”
 - **Response:** WHD appreciates OIG’s recognition that WHD has successfully reduced the amount of time it takes to complete a wage survey by more than 50% since 2002. As OIG correctly notes, WHD now strives to complete all DBA surveys within 21 months of the survey start date. WHD is pleased that OIG has acknowledged that the agency has made tremendous progress towards that ambitious 21-month goal, and WHD pledges to continue to strive towards greater survey efficiency going forward. WHD anticipates that future DBA prevailing wage surveys will satisfy this 21-month goal. Despite the agency’s significant success in expediting the DBA wage survey process, WHD agrees with OIG’s determination that the agency should continue to reduce the amount of time between the survey start date and the date that the wage determination is ultimately published. To this end, WHD will carefully consider the thoughtful suggestions that OIG has made to assist the agency in accomplishing this important programmatic objective while maintaining the quality of DBA wage determinations.
- **OIG Determination (Table 1 on p. 5 & passim):** Published DBA wage rates were as many as 40 years old.
 - **Response:** Although OIG accurately notes that certain published DBA wage rates are nearly 40 years old, OIG’s report also correctly reflects that such aged wage rates are in fact exceedingly uncommon. As demonstrated by Table 1 on p. 5 of OIG’s report, 94.37% of all published DBA wage rates are less than 10 years old.⁴ Moreover, Table 1 reflects that only 0.56% of rates are more than 35 years old. When breaking the data down to “CBA” rates and “Open Shop” rates, OIG’s own analysis shows that fully 99.39% of all CBA rates and 89.71% of all Open Shop rates are less than 10 years old.

With respect to the relatively small number of wage rates reflected on OIG’s Table 1 that are more than 10 years old, WHD notes that there are several reasons why such published aged rates may not have been updated. For example, some of those rates appear on specialty construction wage determinations, which are wage determinations issued for highly specialized types of construction such as oil well drilling. Such specialty construction wage determinations may have been issued

⁴ WHD notes that OIG’s Table 1 may slightly overstate the total number of “unique” published DBA wage rates because it appears that OIG may have duplicated certain rates based on the number of construction types listed on the relevant wage determinations, but such duplication does not materially affect the overall findings presented in the OIG report.

for specific construction projects that occurred in specific localities decades ago and are no longer in use. Perhaps even more notably, some of the aged wage determinations in OIG’s calculation appear to apply only in sparsely populated, truly rural counties. Not only are such counties relatively unlikely to have extensive (or perhaps any) DBA-covered construction in any given period of time, but also the amount of construction in such counties may be sufficiently minimal that it could be exceedingly unlikely that WHD could conduct a DBA wage survey that would yield sufficient survey data to enable WHD to publish more current rates.

WHD agrees with OIG that DBA wage determinations must be as timely and accurate as possible. As part of its survey planning process, WHD will continue to consider the age of existing DBA wage rates in determining where to conduct DBA wage surveys. Moreover, as noted above, WHD intends to develop and implement a new strategy to identify DBA wage determinations that are more than 10 years old and unlikely to be in current use by contracting parties, such as some of the specialty construction wage determinations mentioned above. WHD will then adopt a new risk-based approach to managing such wage determinations, such as removing those wage determinations from Wage Determinations OnLine (WDOL) or classifying the wage determinations in a manner that will minimize confusion or any “negative perception” that OIG believes may result when the public views such aged information on the website.

- OIG Determination (p. 7): “Instead of performing 100 percent manual reviews, WHD could have considered other strategies, such as the use of statistical sampling or a risk-based approach that stratified WD-10s as high-medium-low risk based on past performance or other indicators that review is warranted.”
 - Response: This assertion appears to assume that, if WHD conducts no manual review of the WD-10s it receives (other than a review of a sample based on a statistical or “risk-based” approach), WHD nonetheless will be able to determine from the face of each unreviewed WD-10 exactly what classification(s) it lists and the precise wages and fringe benefits paid to the workers in each such classification, without the need for any clarification or supplementation from the party that submitted the data. Such an assumption would be unwarranted and inconsistent with WHD’s real-world experience, which reflects that, in the absence of clarification of the data received, a significant percentage of WD-10s would be unusable because it would be impossible to discern with complete confidence from the face of the WD-10 how the work should be classified or what specific rate was paid. This fact is reflected in WHD’s 1986 *Manual of Operations*, which describes a number of critical purposes that are served through the clarification process, including that “[d]etermining the nature of work performed by various occupational classifications reported is an area that often needs clarification (particularly among laborers and equipment operators) and quantification of fringe benefits (particularly by open shop contractors) also generally requires some call-backs.” *Manual of Operations* at 58. In addition,

even as to WD-10s that would be usable without any clarification, the clarification process can enable WHD to address issues with the submitted WD-10s that are not apparent from the face of those forms and thereby promotes the use of accurate, usable wage data.

OIG repeatedly emphasizes in its report that the voluntary nature of the DBA wage survey program is an obstacle to the collection of truly robust wage data and that WHD should seek to identify ways to increase the amount of wage data available to it. WHD notes that this important goal, however, is in tension with – and in fact would be undermined by – the use of statistical sampling because, without comprehensive (or at least extensive) clarification, WHD would be unable to use much of the wage data it receives.

For these reasons, WHD questions whether statistical sampling would be appropriate and whether it would be more efficient or effective than the clarification and verification that WHD currently performs. In our experience, the clarification process significantly improves the quality of the information received. Use of statistical sampling in lieu of comprehensive clarification could result in the publication of fewer, and less robust, wage determinations. At the same time, WHD appreciates and agrees with OIG’s more general observation that a time-consuming, detailed review of every WD-10 form that is submitted may not be necessary, and WHD will continue to look for ways to streamline its review and clarification process.

- OIG Determination (p. 7 & passim): WHD could have used a variety of methods, such as utilizing rate escalators like the CPI, adopting OES data, and adopting state or local wage rates, to help publish nonunion wage rates in a more timely manner.
 - Response: As WHD has previously advised OIG, WHD believes that the DBA’s implementing regulations do not allow WHD to utilize rate escalators like the CPI or to generally adopt OES wage data or wage rates determined by states or localities. WHD believes it would at least need to engage in notice-and-comment rulemaking pursuant to the Administrative Procedure Act before it could adopt any of these articulated proposals. Accordingly, to the extent that OIG suggests on p. 8 of its report that WHD could have used these alternative methods to help bring nonunion prevailing wage rates current in the Alaska and Kansas residential surveys, the utilization of such methods would not have been permissible for those surveys pursuant to the DBA’s regulatory requirements.

To the extent that WHD prospectively determines that regulatory changes would be both legally permissible and programmatically appropriate, WHD will discuss any such regulatory proposals with DOL leadership in the normal course of developing the agency’s regulatory priorities and agenda. WHD has also pledged to continue to work with its federal partners, including the Bureau of Labor Statistics and the Census Bureau, to periodically assess whether it would be

appropriate and feasible to use OES or other data for purposes of improving the survey process.

OIG Findings and Conclusions Regarding the Accuracy of DBA Wage Determinations

- **OIG Determination (p. 7):** Contractors and other interested parties “submitted 38,225 WD-10 reports that WHD reviewed and clarified for usability by making phone calls.”
 - **Response:** WHD appreciates OIG’s recognition of its significant efforts to clarify and ensure the accuracy of the wage data submitted to the agency. Although OIG believes there may be alternate methods that the agency could utilize to expedite the survey process, as discussed above, WHD is pleased that the report acknowledges the agency’s comprehensive efforts to ensure that DBA wage determinations are based on accurate and appropriately classified wage data.
- **OIG Determination (pp. 11-12):** “WHD stated that it had not defined the specific criteria that must be considered in order to justify using the [three worker/two contractor] standard. However, WHD used this standard for the Kansas Heavy Survey, and our review of craft reports showed that exactly 3 workers and 2 contractors were used to calculate the rates for two key job classifications – Truck Drivers (a union rate) and Crane Operators (\$37.05) – in two metropolitan counties.”
 - **Response:** As OIG correctly notes, for purposes of determining DBA prevailing wage rates, WHD utilizes a minimum survey sufficiency requirement for all surveys. In 2012, WHD decided to change the minimum craft sufficiency threshold from a 3-worker/2-contractor standard (3/2 standard) to a 6-worker/3-contractor standard (6/3 standard), except in narrow circumstances where WHD determines in its discretion that the sample size of contracts and workers is sufficiently small that it is necessary to continue to use the 3/2 standard in order to ensure that WHD would be able to publish a survey rather than retain the prior, old survey rates. For example, WHD generally only uses the 3/2 standard in rural areas and/or for particularly uncommon classifications.

With respect to the Kansas Heavy Survey, WHD respectfully submits that it did indeed apply the above-specified criteria in order to justify using the 3/2 standard. Those criteria were satisfied with respect to the Kansas Heavy survey. Specifically, if WHD had applied the 6/3 standard to the Kansas Heavy survey, it would have negatively impacted WHD’s ability to publish wage determinations as a result of the survey.
- **OIG Determination (p. 14):** The certified public accounting firm hired by WHD to conduct onsite verification reviews identified “832 errors” in the Verification Reports they prepared for six sampled surveys.
 - **Response:** As WHD has consistently informed OIG throughout this audit, OIG’s reference to “832 errors” is inflated and misleading. The error figure is the result,

at least in part, of contractors inadvertently making an identical error(s) on multiple WD-10s that they submitted. In other words, a single error may affect all of a contractor's submissions, but rather than count the error once, OIG's calculation counts the same error each time it is repeated, making even a simple clerical error appear to be a widespread one.

- OIG Determination (pp. 14-15): Voluntary participation resulted in less wage data to calculate wage rates.
 - Response: WHD agrees with OIG that the voluntary nature of the DBA wage survey data collection process presents a challenge to WHD. WHD appreciates OIG's recognition that WHD has made significant efforts to increase survey participation rates. As OIG acknowledges, WHD has in recent years implemented a number of new innovative strategies to increase its chances of collecting enough wage data to ensure prevailing wage rates accurately reflect wages rates paid in a particular locality, including publishing press releases announcing the surveys; conducting pre-survey briefings with international and local unions and contractors; introducing mid-survey briefings, which, in at least one case, led to an influx of additional data; contracting for certain services to promote participation; and creating an internet-based platform for interested parties to submit WD-10 wage reports electronically. Although WHD cannot control the ultimate amount or quality of wage data submitted by interested parties, WHD is committed to utilizing its best efforts to ensure that any interested party who has potentially relevant wage data is aware of the survey and understands how it may be involved in the process.
- OIG Determination (p. 15): WHD "had no performance goals or measures that addressed the quality of prevailing wage rates for the DBA Wage Determinations Program."
 - Response: OIG's assertion could be construed to suggest that WHD had not sought in any way to measure the quality of the DBA wage determination process. The assertion thus overlooks WHD's considerable efforts to effectively gauge the substantive accuracy and usefulness of DBA wage determinations. In fact, over the past two years, WHD has considered a number of performance measures in order to replace the "average age" measure with other measurements of survey quality. Significantly, WHD has also established internal performance metrics to track office productivity, which has a direct impact on survey quality. WHD will continue to set targets to improve agency performance on this measure. For the FY 2020 planning cycle, WHD will also develop additional qualitative milestones and/or quantitative measures to encourage further improvements in wage determination quality.
- OIG Determination (p. 19): WHD "should develop a risk response for how it plans to handle the impact of wage rate reductions on DBA-covered workers and the reputation of the program."

- Response: OIG’s suggestion that WHD should develop a risk-based response for handling situations in which the publication of wage rates at the county level may result in lower wage rates than currently published reflects a misunderstanding of how the DBA wage survey program operates. The risks identified or referred to by OIG are neither deficiencies nor problems capable of being solved by WHD; they are simply the consequences of conducting a prevailing wage survey program that comports with the DBA and its regulations. In the DBA context, WHD is tasked with determining the wage rate that prevails at a particular time in a specific locality for a particular job classification. Each prevailing wage determination replaces the prior determination, and the pre-existing published wage rates cannot be factored into the publication of new prevailing wage rates, even when the new survey may result in significant wage changes. Such is the reality of conducting DBA prevailing wage surveys; it is not a fault attributable to WHD’s administration of the DBA program. Nor is that reality a new development for this statutory program that has existed for many decades.

Moreover, OIG offers no meaningful evidence for its assertion that DBA wage rates will decline when subsequent surveys are conducted and published at the county level. DBA wage rates may increase, decrease, or remain constant when new surveys are conducted and rates are published at the county level; there is no reason to believe that wage rates will substantially drop in such circumstances. As noted above, the chance that a new published wage rate may substantially differ from the prior published wage rate will always be present in any DBA prevailing wage program that comports with the statute and regulations.