

ALAN G. HEVESI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 10, 2005

Ms. Linda Angello
Commissioner
Department of Labor
Building 12, State Campus
Albany, New York 12240

Re: Report 2004-F-13

Dear Ms. Angello:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Labor (Department) to implement the recommendations contained in our audit report, *Enforcement of the Prevailing Wage on Public Construction Contracts (Report 2001-S-68)*.

Background, Scope and Objectives

Article 8, Section 220 of the New York State Labor Law requires that contractors on public work construction projects provide their employees with wages and fringe benefits commensurate with the prevailing rate and practices applicable to similarly employed workers in the locality of the project. To be considered a public work project, a project's primary objective must be to benefit the public. A public entity also must be a party to a contract involving the employment of laborers, workers, or mechanics. Based on collective bargaining agreements, the Department's Bureau of Public Work (Bureau) sets prevailing wage rates. The Bureau also enforces the prevailing wage rates applicable to public work projects in the State.

To enforce prevailing wage rates, the Bureau performs proactive investigations and responds to complaints. The State Labor Law provides that each prevailing wage complaint investigation be settled or closed within six months of the date the complaint was received by the Bureau. All complaints must be written, and the Bureau makes determinations as to each complaint's validity.

Our initial audit report, which was issued on February 20, 2003, determined whether the Department's complaint investigation process was effective and if investigations were completed within six months as recommended by law. We also determined whether the Department remitted unclaimed restitution payments to the Office of the State Comptroller (OSC) within the timeframe required by law. Our report concluded that comprehensive changes were needed in the Department's complaint investigation process; investigations were often slow to be initiated and

sometimes continued for extended periods after they were assigned to an investigator. We also concluded that the Department needed to improve its controls over the funds held for restitution payments. In addition, we determined that unclaimed payments are not always remitted to OSC in accordance with law. At the time of our audit, we learned that many of the problems we identified and discussed were also identified by the Department's internal review conducted in 1998. The objective of our follow-up, which was conducted in accordance with Generally Accepted Government Auditing Standards, was to assess the extent of implementation as of September 21, 2004 of the nine recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the Department has made some progress in correcting the problems we identified and discussed in our audit report. Of the nine initial recommendations, officials have implemented three and partially implemented one. They have not implemented the remaining five audit recommendations.

Follow-up Observations

Recommendation 1

Develop an action plan for reducing the backlog of open complaint investigations.

Status - Not Implemented

Agency Action - Officials stated that Bureau personnel continually make every effort to conduct an investigation efficiently and effectively. However, the volume and complexity of the investigation, as well as the lack of cooperation from employers, expand the time frame of the case.

To determine if the Department has made progress in reducing the backlog of complaint investigations, we compared statistics reflected in the Bureau's report of open cases as of September 1, 2004 to statistics in the prior report. We found that while the number of total cases has declined, the number of cases that are open for an extended period has increased. For example, as of September 1, 2004, 19 percent (389 cases) of the Department's open complaint investigations have been active for more than five years. By contrast only 14 percent (309 cases) were active for more than five years as of March 1, 2002, an increase of 26 percent (or 80 cases).

Comparison of Open Complaint Investigations
Prior Report vs. Current Statistics (as of September 1, 2004)

Cases Open	Prior Report	Current Statistics
	As of March 1, 2002	As of September 1, 2004
Total	2,150	2,044
More Than Six Months	1,852 (86%)	1,737 (85%)
More Than 2 Years	1,020 (47%)	1,014 (50%)
More Than 5 Years	309 (14%)	389 (19%)

Recommendation 2

Improve the management reporting system for complaint investigation so that the information on the system is accurate, complete, up-to-date and sufficiently detailed to be of use in monitoring the progress of complaint investigations. Take corrective action when the system is not updated accurately, promptly or correctly.

Status - Not Implemented

Agency Action - Department officials stated that they verbally reinforced the importance of the management reporting system for complaint investigation to senior staff during a supervisory meeting, however, they have not modified their management reporting system so that the information on it is accurate, complete, up-to-date or sufficiently detailed to be of use in monitoring the progress of complaint investigations.

In the Department's 90-day response, officials stated that they are in the process of developing and installing a software program called CURAM. Once CURAM is installed, the Bureau would easily be able to develop and maintain detailed reports on each of their functions. However, Department officials informed us that they are only now beginning to review their work processes to determine how CURAM can be programmed to meet their needs. Department officials could not tell us when the installation will be complete; officials have also not developed a time-line for this project.

Recommendation 3

Analyze caseloads and staffing needs to develop reasonable benchmarks for investigator productivity.

Recommendation 4

Use the productivity benchmarks to develop specific goals for reducing delays in the complaint investigation process. Use the management reporting system to monitor the performance of the

district offices in meeting these goals, and take corrective action when the goals are not met.

Status of Recommendations 3 and 4 - Not Implemented

Agency Action - Officials stated that the nature of the investigation business makes it difficult to establish a useful performance measurement system. For example, employee and employer cooperation and legal maneuvering by contractors' attorneys can not be measured but they impact the timeliness of an investigation. Therefore, officials have not developed benchmarks for investigator productivity.

Recommendation 5

Identify areas of the investigation process that need to be re-engineered, and identify legislative requirements that need to be changed to facilitate the investigation process.

Status - Partially Implemented

Agency Action - Officials are finalizing revisions to the Bureau's investigative procedures manual. Once approved, officials plan to share the draft with their District offices. Officials also stated that they did not identify any legislative requirements that need to be changed to facilitate the investigation process because they don't believe additional legislation will help them conduct their investigations.

Recommendation 6

Coordinate with other Department units and other government agencies to obtain access to information that is needed for complaint investigations.

Status - Implemented

Agency Action - The Department has proposed legislation that will allow the Bureau to obtain relevant data from the Department of Taxation and Finance. In addition, officials entered into an agreement with the Dormitory Authority regarding public works investigations and officials stated that they have been working with the State Insurance Department to identify how they can assist each other by sharing information.

Recommendation 7

Separate among different employees the duties related to the funds held for restitution payments.

Status - Not Implemented

Agency Action - Officials stated that they have instituted a policy requiring a supervisor's signature to change vital information. However, a single person still is responsible for verifying the amount of restitution owed to each claimant, verifying the address of the claimants, authorizing payments to the claimants, and maintaining the records that summarize the

payments for Bureau records. Also, while a change report is generated and it identifies all data changes, district offices do not verify that changes made were properly authorized.

Recommendation 8

Clarify who is responsible for identifying unclaimed restitution payments for transfer to OSC, and monitor the unclaimed payments to determine whether they are transferred in accordance with the Abandoned Property Law.

Status - Implemented

Agency Action - Officials assigned the responsibility for identifying unclaimed restitution payments for transfer to OSC to a senior investigator. In May 2004, the Department transferred \$345,450 to OSC in accordance with the Abandoned Property Law.

Recommendation 9

Monitor the outstanding restitution checks and void all checks that have been outstanding for more than six months.

Status - Implemented

Agency Action - Officials assigned the responsibility for monitoring outstanding restitution checks to a senior investigator. We reviewed the Department's outstanding checks and found that stale dated checks had been voided in accordance with Department policy.

Major contributors to this report were Richard Sturm, Donald D. Geary and Randy Partridge.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

William P. Challice
Audit Director

cc: Karen Stackrow
Robert Barnes