

**Montgomery County, Maryland
Office of the County Executive
Office of Internal Audit**



**Audit of Wage Requirements Law Compliance
CAMCO, LLC**

November 16, 2015

Highlights

Why MCIA Did this Audit

Contractors who provide services to the County are subject to the Montgomery County Code provisions regarding compliance with certain wage requirements payable to the contractor's employees under the County's Wage Requirements Law ("Wage Law"). The Montgomery County Office of Procurement's (Procurement)¹ Division of Business Relations and Compliance (DBRC) is responsible for monitoring compliance with the Wage Law. The County's Department of Transportation (MCDOT) has a contract with CAMCO, LLC ("CAMCO"), to provide parking garage cleaning services.²

In December 2014, Procurement requested that the Office of Internal Audit (MCIA) perform a Wage Law audit of CAMCO covering all of its employees who perform work in Montgomery County, to include 100% of all pay periods from June 2012 through the start of the audit on January 26, 2015. At the request of MCIA, the review was temporarily suspended from February 6, 2015 through May 21, 2015. The audit was conducted by the accounting firm SC&H ("Audit Firm"), under a contract with MCIA.

What MCIA Recommends

MCIA is making two recommendations to Procurement dealing with the determination of the remedy or remedies to seek against CAMCO for statutory or contract violations arising from noncompliance with the Wage Law.

November 2015

Audit of Wage Requirements Law Compliance – CAMCO, LLC

What MCIA Found

CAMCO, LLC did not comply with the Wage Law. Based on the information that was provided to us by CAMCO, and the testing criteria provided to us by the Office of Procurement (Procurement), CAMCO underpaid its employees in 20 of 318 instances that we were able to test. This resulted in a total underpayment of \$1,808.20. Our testing was limited by CAMCO's failure to provide all requested payroll records. Specifically, CAMCO did not provide payroll records or other evidence of wages paid to employees for 18 of the 64 payroll periods (approximately 28%) that were selected for testing; providing payroll records for only 46 (72%) of the selected payroll periods.

In addition, within the 46 payroll periods for which payroll records were provided, 121 of the 439 total instances (approximately 28%) in which we found that time was worked on County contracts did not correspond to a payroll record entry for that employee; allowing testing on 318 (72%) of the instances for which payroll records were provided. CAMCO's failure to maintain or provide payroll records is, itself, a violation of County Wage Law requirements.

¹ Prior to March 26, 2015, DBRC was part of the County's Department of General Services. Effective March 26, 2015, DBRC was reorganized to be part of a newly created Office of Procurement, which is a principal Office of the County's Executive Branch.

² The term of the County contract with CAMCO ended on May 31, 2015.

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Objectives

This report summarizes an audit performed by SC&H Group under contract with the Montgomery County (“County”) Office of Internal Audit (MCIA) to review and determine compliance with the Wage Requirements Law (“Wage Law”), under Montgomery County Code § 11B-33A. The primary objective of the audit was to review and determine compliance by CAMCO, LLC (CAMCO), a County contractor, with the Wage Law.

This internal audit was performed in accordance with consulting standards established by the American Institute of Certified Public Accountants (AICPA) and generally accepted government auditing standards (GAGAS) established by the Government Accountability Office, as appropriate. SC&H Group’s proposed procedures were developed to meet the objectives stated above, and were reviewed and approved in advance by MCIA. The interviews, documentation review, and field work were conducted from January 2015 to August 2015.

Background

Wage Requirements Law

The County Council passed, on June 11, 2002, and the County Executive signed on June 20, 2002, Bill 5-02³, relating to Wage Requirements pertaining to service contracts. Under this law, a contractor who provides services to the County is subject to the Montgomery County Code regarding compliance with certain wage requirements payable to the contractor’s employees. If the resultant contract will be subject to the Wage Law, there also are mandatory submission requirements applicable to the corresponding solicitation. The Chief Administrative Officer adjusts the wage rate annually, effective July 1st of each year. The following table details the respective Wage Law amount effective for the time period under review.

Table 2 –Wage Law Rate

Wage Law Rate			
July 1, 2011 – June 30, 2012	July 1, 2012 – June 30, 2013	July 1, 2013 – June 30, 2014	July 1, 2014 – June 30, 2015
\$13.20	\$13.65	\$13.95	\$14.15

Contractor Certification of Wage Law Compliance

The County Office of Procurement’s (Procurement) Division of Business Relations and Compliance (DBRC) is responsible for monitoring compliance with the Wage Law. In accordance with County Procurement requirements, a bidder on a contract that is subject to the Wage Law must submit a signed Wage Requirement Certification Form with its bid or proposal submission. On the form, the contractor must indicate its intent to comply with the Wage Law or indicate which exemptions or reductions from the Wage Law apply. In addition, not-for-profit organizations that are exempt from the Wage Law can decide to opt-in to comply with the law.

CAMCO did not qualify for general exemption status because, at the time of contract execution, it was estimated that the payments received under the contract would exceed \$50,000. Payments made to CAMCO in 2012, 2013, and 2014 were approximately \$792 thousand, \$336 thousand, and \$1.49 million, respectively. Also, since CAMCO is not recognized as a not-for-profit organization, neither the nonprofit organization exemption, nor the accompanying opt-in

³ <http://www6.montgomerycountymd.gov/content/council/pdf/bill/2002/05-02e.pdf>

election to comply with the Wage Law, are applicable. In addition, CAMCO was not eligible to reduce the required wage amount below Wage Law requirements by deducting the employer's share of the employees' health insurance premium it was paying, because CAMCO failed to: (a) seek to avail itself of this reduction in wage amount at the time of the solicitation; (b) submit required documentation to demonstrate that it would (or did in fact) provide healthcare insurance to its employees; and (c) demonstrate that it would pay a share of the health insurance premium, to justify a reduction in the wage amount paid to those employees based on the "per-employee hourly cost of the employer's share of the premium". See Montg. Co. Code, § 11B-33A (d) & (e).⁴ To the contrary, CAMCO acknowledged that it did not pay a share of the employee's health insurance premium, but, instead, reduced wages by an amount reflecting its internal, per employee cost to make insurance available to its employees.

The following table details the exemptions or reductions, and optional compliance, for which a contractor may be eligible under the Wage Law.

Table 3 – Allowable Wage Law Exemptions, Reductions, and Optional Compliance

Type	Name	Description	Applies to CAMCO
Exemption	Exemption Status	A contractor, who, at the time a contract is signed, has received less than \$50,000 from the County in the most recent 12-month period and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Montg. Co. Code, §11B-33A (b) (1) (A) & (B).	No
Exemption	Non-profit Wage and Health Information	A contractor that is a non-profit organization is exempt from coverage. Montg. Co. Code, § 11B-33A (b) (3).	No
Reduction	Wage Requirements Reduction	A contractor that is a "covered employer," may reduce its hourly rate paid under the Wage Law by an amount equal to, or less than, the per employee hourly cost of the employer's share of the health insurance premium. Montg. Co. Code, § 11B-33A (d) (1) & (2); <i>see also</i> 11B-33A (c).	No

⁴[http://www.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/chapter11bcontractsandprocurementnote?f=templates\\$fn=altmain-nf.htm\\$3.0#JD_11B-33A](http://www.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/chapter11bcontractsandprocurementnote?f=templates$fn=altmain-nf.htm$3.0#JD_11B-33A)

Type	Name	Description	Applies to CAMCO
Opt-In	Non-profit's Comparison Price	A contractor that is a non-profit may opt to pay its covered employees the hourly rate specified in the Wage Law and not be penalized in a solicitation due to the additional amount in its price that results from paying the Wage Law amount. See Montg. Co. Code, § 11B-33A (b) (3) & (c) (2).	No

Qualifications for Allowable Reduction to the Required Wage Law Amount

In order to qualify for the allowable health insurance reduction to bring the required wage to an amount below that required under the Wage Law, a contractor must indicate at the time of, and in, its bid or proposal (on the Wage Requirement Certification Form, or otherwise), its intent to take the health insurance reduction (including how it and its subcontractors will comply with the wage requirements, and that it has sufficient funds to meet the wage requirements⁵). In addition, a contractor must certify within its bid or proposal submission the per-employee hourly cost of the employer's share of the premium for health insurance. The contractor also must indicate the amount of any reduction it will take from the Wage Law rate amount paid to employees⁶. Per the Wage Law, a contractor is allowed to reduce the effective wage amount paid to an employee who is covered by the health insurance only by all or part of the per-employee hourly cost of the employer's share of the health insurance premium.⁷

Wage Law Compliance – Contractor

Each contractor that is subject to the Wage Law must perform tasks to show compliance with the Wage Law. First, the contractor must certify that it, and each of its subcontractors with whom it works, is aware of, and will comply with, the applicable wage requirements. Second, the contractor must keep and submit any records necessary to show compliance with the law. Third, the contractor must conspicuously post notices informing employees of the wage requirements. Further, the contractor must submit quarterly certified payroll reports to the Office of Procurement's (Procurement) Division of Business Relations and Compliance (DBRC).⁸

Contractor Selected for Audit

Procurement requested the MCIA to perform a Wage Law audit of CAMCO covering all of its employees who perform work in Montgomery County, for 100% of the pay periods from June

⁵ Montg. Co. Code, § 11B-33A (c)(1).

⁶ Montg. Co. Code, § 11B-33A (d)(1) & (2); § 11B-33A (c)(1) & (2).

⁷ "If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance, and reduce the wage paid under subsection (e) to any employee covered by the insurance by all or part of the per-employee hourly cost of the employer's share of the premium." Montg. Co. Code, § 11B-33A (d).

⁸ Montg. Co. Code, § 11B-33A (h)(1) (A) - (C).

2012 through the start of the audit on January 26, 2015. In response, MCIA directed its audit contractor, SC&H, to audit CAMCO's compliance with the Wage Law.

Scope and Methodology

Wage Compliance Scope and Methodology

We reviewed CAMCO's compliance with the Wage Law for the time period of June 2012 through the start of the audit on January 26, 2015, during which CAMCO has been providing services to the County. We requested that CAMCO provide us with timekeeping and payroll documentation to support 100% of the payroll periods from the start of the contract through the last pay period that occurred prior to the start of this audit on January 26, 2015.

Payroll Population

To evaluate CAMCO's practices, and its alignment with the Wage Law requirements, we first conducted interviews with CAMCO's owner and its vice president, to gain an understanding of time keeping practices, payroll procedures, and fees deducted from employee pay. We also requested documentation for 100% of the payroll periods that occurred during the audit period previously stated. For each payroll period, we requested the Payroll Register showing all employees that performed work under the Montgomery County contracts during that pay period, as well as evidence of the hours that each included-employee worked during the period, and each employer deduction from the employee wages.

Our population size included a total of 64 pay periods. CAMCO provided us with payroll registers for a total of only 46 pay periods (approximately 72% of the request). To corroborate that the population of employees included on each payroll report represented the complete population of employees that performed work under Montgomery County contracts during that period, we requested that CAMCO provide us with a listing of all employees, past and present, who performed work on the County's contract. In addition to the employee list provided by CAMCO, we also obtained the source timecards completed by all CAMCO employees each week, as well as the timekeeping reports that are agreed upon by both the County and CAMCO.

Table 4 – Documents and Information Requested

Documentation and/or Information Requested	Document and/or Information Received	Comments
Timekeeping records for payroll periods selected for testing	Received (Provided by the County)	CAMCO employees record time through the use of timecards. CAMCO uses the hours from the timecards to populate timekeeping spreadsheets. The County compares the timekeeping spreadsheets to the original timecards to help reconcile with CAMCO the accuracy of CAMCO's timekeeping spreadsheets; the reconciled timekeeping spreadsheet is agreed to by both the County and CAMCO. The County also uses the timekeeping spreadsheets to validate the CAMCO invoices. We obtained each of the timekeeping spreadsheets.

Documentation and/or Information Requested	Document and/or Information Received	Comments
Wages paid to employees for payroll periods selected for testing	Partial (Provided by CAMCO)	CAMCO provided employee wage support documentation for 46 of 64 payroll periods selected for testing.
Detail of deductions taken from employee gross pay by type of deductions and amounts for each employee for payroll periods selected for testing	Partial (Provided by CAMCO)	CAMCO provided the detail of deductions taken from employee gross pay by type of deductions and amounts for each employee for 46 of the 64 payroll periods selected for testing.

Based on the payroll information provided by CAMCO, we had payroll data for a total number of 318 testable instances (total employee instances from the payroll records/periods provided for which both payroll and timekeeping records were made available).

Employee Wages

CAMCO pays its employees an hourly rate that could vary based on employee level, experience, etc. To be compliant with the County's Wage Law, this rate should be at or above the County's required wage amount in each instance.

Employee Timekeeping

Employees record the time at which they begin work each day, as well as the time at which they conclude work each day, by using a timecard with which they clock in each morning, and clock out each night. The time clock is housed at a central location, from which the CAMCO employees travel to their assigned locations after clocking in, and then return each evening to clock out. As such, there are no corresponding time punches to evidence when lunch periods were taken, although discussions with County and CAMCO contacts indicate that 30 minutes is taken by the employees for lunch each day.

Following each week, CAMCO populates a timekeeping spreadsheet with the hours worked by its employees. The timekeeping spreadsheet is sent to the Montgomery County Department of Transportation (MCDOT), Parking Management Division. An employee within the MCDOT Parking Management Division reviews the timekeeping spreadsheet provided by CAMCO and compares the hours noted in the spreadsheets to the time cards that were used by CAMCO employees during the applicable week. The MCDOT Parking Management Division discusses with CAMCO any discrepancies in employee hours noted on CAMCO's spreadsheets versus the hours noted on the employees' timecards, which results in a reconciled timekeeping spreadsheet that both the County and CAMCO agree with, and that is used as the basis upon which the County pays CAMCO invoices.

For the purposes of our testing, we utilized the timekeeping spreadsheets as the basis for the hours that we used in our calculations. The spreadsheets were selected because they represented data that was agreed upon by both the County and CAMCO.

Hourly Wage Calculation

In each instance that we tested, our methodology for computing employee hourly rates by which to determine CAMCO's compliance with the County's Wage Law was based on guidance that was provided by the County. Based on that guidance, our Wage Law compliance testing was to perform a calculation in each instance that uses the employee's "Regular Earnings,"⁹ and dividing by the employee's "Regular Hours"¹⁰ reported for that period. The Regular Hours were taken from the timekeeping spreadsheets that were agreed upon by both the County and CAMCO.

Testing

In order to determine whether CAMCO paid its employees in accordance with the County's wage requirement, we compared the Hourly Wage Rate that was calculated in each instance of our testing, to the Wage Law Rate that was in effect at the time of the pay period tested.

Each instance where the Hourly Wage rate that an employee was paid by CAMCO that was less than the County's required Wage rate was considered an exception.

In order to calculate the amount of underpayment for each exception, we multiplied the Wage Law rate that was in effect at the time of the pay period tested by the Regular Hours that were reported for that instance to determine the Calculated Regular Earnings (rounded to the nearest cent). We then subtracted the amount of Regular Earnings that were paid to the employee in that pay period. The resulting amount represented the underpayment for that employee, for that pay period. The sum of each of these instances provided us with the total amount of underpayment that we could determine based on the information that was provided by CAMCO for our testing.

Example (1 Employee):

Wage Rate		13.95
Regular Hours	X	<u>36.05</u>
Calculated Regular Earnings	=	502.90
Reported Regular Earnings	-	<u>500.00</u>
Over/(Under)	=	<u>\$ (2.90)</u>

Scope Limitations

It is important to identify each of the factors that limited the information that was available for us to consider, and the impact that it may have had on our overall findings and our ability to definitively assess CAMCO's compliance with both the letter and the intent of the County's Wage Law.

⁹ "Regular Earnings" is defined as wages paid for hours worked, up to 40 hours per week. Regular Earnings do not include wages earned for Overtime, Vacation Time, Holiday Time, Sick Time, Paid Time Off, etc.

¹⁰ "Regular Hours" are hours actually worked by an employee, up to 40 hours per week. Regular Hours do not include hours logged for Overtime, Vacation Time, Holiday Time, Sick Time, Paid Time Off, etc.

Payroll Records – Completeness

We were unable to perform additional Wage Law compliance testing because of limitations with the payroll records that we were provided by CAMCO. CAMCO provided us with payroll records for 46 of 64 (approximately 72%) of all payroll periods that occurred during the audit period. This means that we did not receive any payroll records for 18 of 64 (approximately 28%) of the payroll periods that occurred within the audit period. The County provided us with timekeeping spreadsheets that reflected 439 instances in which CAMCO employees recorded hours worked for which they should have received wages from CAMCO. This resulted in 439 potentially testable instances; however, in 121 of those 439 instances, we found that time was worked on the County contract for which CAMCO did not provide corresponding payroll records for those employees/instances. As such, the documentation provided yielded 318 testable instances.

Timekeeping Accuracy

A component of our review included an analysis of both the timecards that were used by CAMCO employees to record their time worked each day, and the timekeeping spreadsheets through which CAMCO summarized the hours worked by each CAMCO employee each period and that are agreed upon by both the County and CAMCO. We identified a pattern of rounding of hours worked by employees each day when they were transferred from the timecards to the timekeeping spreadsheets. For example, if an employee clocked in at 5:24AM and clocked out at 2:30PM, then the employee was “on the clock” for 9 hours and 6 minutes (8 hours and 36 minutes, including the deduction for a 30 minute lunch break). However, when the employee’s hours were transferred to the timekeeping spreadsheet, they were rounded to an even 8 hours for the day.

On average, this rounding resulted in an average (across the 318 testable instances) timekeeping error each pay period of almost 44 minutes per employee (which equates to an average payment error of \$9.98 per instance).

Other Information

Please refer to Appendix B for other observations regarding CAMCO’s payroll operations.

Findings

Wage Law Compliance

Based on the information that was available to us for testing, and considering the scope limitations under which our testing was performed, our review found that CAMCO did not comply with the County’s Wage Requirements Law in 20 of the 439 instances tested (approximately 4.6%). These instances of non-compliance resulted in a total underpayment in the amount of \$1,808.20. See Appendix A for the total amount of underpayment, per employee.

Based on our findings that 12 employees (comprising the 20 instances within the 439 instances) were underpaid by CAMCO, the average amount of underpayment was calculated as \$150.68 for each employee who was underpaid.

$$\$1,808.20 / 12 = \$150.68$$

Payroll Documentation

We found that CAMCO did not comply with the County’s requirement to “keep and submit any records necessary to show compliance.” Our testing was limited by CAMCO’s inability/failure to maintain wage information and provide us with the payroll records or other evidence of wages paid to employees for 18 of the 64 payroll periods that were selected for testing. Additionally, our testing identified 121 instances (of the 439 available instances) in which there was no evidence of employee wages included on the payroll registers that CAMCO provided for our testing; however, the employees’ hours worked were included on the timekeeping spreadsheets provided by the County for the corresponding time periods. As a result of CAMCO’s failure to provide a complete set of employee payroll records, we were unable to complete our assessment of CAMCO’s compliance with the County’s Wage Requirement Law for each instance in which payroll records were not provided, as there was insufficient information to perform a calculation.

As part of each contract executed with the County, CAMCO signed a Wage Requirements Certification that requires them to submit certified payroll records on a quarterly basis. Based on information provided by Procurement, CAMCO did not submit the required quarterly certified payroll report for any of the ten (10) quarters encompassed by the audit period. The Wage Requirements Law states that CAMCO is required to maintain wage information and submit the documents to the County on a quarterly basis.

Table 5 –Underpayment Computations Based on 64 Payroll Periods Provided by CAMCO

CAMCO Wage Law Rate Review	
Total Number of Payroll Periods Requested:	64
Total Number of Payroll Periods Received:	46

Using The Regular Earnings Provided by CAMCO and the Timekeeping Spreadsheets Provided by Montgomery County	
Hours Reported on Timekeeping Spreadsheet, No Corresponding Payroll Report Entry:	121
Number of Records <u>At or Above</u> the Required Wage Law Rate:	298
Number of Records <u>Below</u> the Required Wage Law Rate:	20

<u>Total Dollar Value of Underpayment:</u>	\$1,808.20
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Average Amount of Underpayment, by Employee	
Dollar Value of Underpayment Based on Information Provided:	\$1,808.20
Average Amount of Underpayment, by Employee based on 12 Employees:	\$150.68

Average Amount of Underpayment, per Instance	
Average Amount of Underpayment, by Employee	\$150.68
Average Amount of Underpayment, per Instance based on the 46 Pay Periods for Which we Received Records	\$90.41

Recommendations to the Director of Procurement

1. Determine what remedy or remedies to seek against the contractor for statutory or contract violations arising from noncompliance with the Wage Law. (See Appendix C listing provisions in County law and the Contracts that provide remedy options.)
2. In determining an appropriate remedy, including the assessment of liquidated or other damages, consider this audit report and any related calculations needed to quantify the individual and aggregate amounts by which CAMCO underpaid the required wage amount to covered employees, as a result of its violation of the Wage Law. (See Appendix D for remedy details.)

Comments and MCIA Evaluation

See Appendix E.

Appendix A – Total Underpayment Amount per Employee

Employee Number	Total Underpayment
1	\$58.40
2	\$106.80
3	\$321.60
4	\$135.60
5	\$23.50
6	\$118.70
7	\$135.60
8	\$123.60
9	\$30.80
10	\$135.60
11	\$482.40
12	\$135.60
Grand Total	\$1,808.20

Appendix B – Observations Regarding CAMCO’s Payroll Operations

During our review process we identified information through the documentation that we received that appeared to be inconsistent with the payroll process, as it was described to us by CAMCO personnel. Though not sufficient in nature to impact the results of our testing, we felt that it was still meaningful enough to include as an appendix to the audit report.

SunTrust vs. TD Bank

It was stated by CAMCO management that the payroll was processed using SunTrust bank, and that the payroll records that they provided were from SunTrust’s payroll banking interface. The files that we received do not contain any evidence that they came directly from SunTrust’s software or online banking interface.

Additionally, we obtained a large amount of paper-based documentation that we were able to scan into PDF form. The paper-based documents to which we were given access included a number of documents that appeared to be paycheck stubs drawn from TD Bank. No explanation was ever given by CAMCO management for the discrepancy, other than for CAMCO management to state that CAMCO only used SunTrust for processing its payroll. There were approximately 700 documents that we collected from CAMCO that appeared to be TD Bank paycheck stubs.

Employees vs. Subcontractors

In addition to the possibility that CAMCO was processing its payroll through two different banks, we also found instances in which some of the payees on the potential TD Bank paycheck stubs were labeled as “Subcontractor”. We identified instances in which the payee’s name per the potential TD Bank paystub matched employee names from the list of employees provided to us by CAMCO. Additionally, in the instances where the payee was listed as “Subcontractor”, we found multiple examples where there were no taxes deducted from the amount paid, and we also found multiple instances where the taxes were deducted from the amount paid, as well as deductions for the package of employee benefits that were a requirement for employment at CAMCO.

This could potentially mean that CAMCO was incorrectly classifying employees as subcontractors. As any analysis of the appropriateness of employee/subcontractor classification was outside the scope of this audit, and no additional information regarding the classification of individuals as employees or subcontractors was proffered by CAMCO, we did not include this in our review.

Appendix C – Excerpts from Wage Requirements Law and Contracts

(c) Solicitation requirements

(1) Each bid or proposal to provide services to the County must specify how the contractor and each subcontractor will comply with these wage requirements, and must include sufficient funds to meet these requirements.

(d) County Code, Sec. 11B-33A (d) “Health insurance.”

If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may:

- 1. certify in its bid or proposal the per-employee hourly cost of the employer’s share of the premium for that insurance, and*
- 2. reduce the wage paid under subsection (e) to any employee covered by the insurance by all or part of the per-employee hourly cost of the employer’s share of the premium.*

(h) County Code, Sec. 11B-33A (h) “Enforcement” :

- 1. The Chief Administrative Officer must require each covered employer to:*
 - a. certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;*
 - b. keep and submit any records necessary to show compliance; and*
 - c. conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer’s designee.*
- (2) The Chief Administrative Officer must enforce this Section, perform random audits and any other audits necessary to do so, and investigate any complaint of a violation.*

(5) *Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section.*

(i) General Conditions of Contract Between County & Contractor:

a. Paragraph 3, Applicable Laws

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing Wage Law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and

procurement laws and regulations, pursuant to the Maryland State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).

b. Paragraph 28, Termination for Default

The Director, Department of General Services, may terminate the contract in whole or in part, and from time to time, whenever the Director, Department of General Services, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;*
- (b) failing to make satisfactory progress in the prosecution of the contract; or*
- (c) endangering the performance of this contract.*

The Director, Department of General Services, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

- (j) Montg. Co. Code § 1-18 "Enforcement" and §1-19, "Fines and Penalties".-*

These County Code provisions address the issuance of notices of violation and civil citations, and provides for fines and penalties, in the event of a violation of the County Code, including the Wage Law. Included in these County Code provisions is the following language:

“If no penalty is specified for taking any action prohibited by County law or failing to take any action required by County law, that action or failure to act is a Class A violation.”

Appendix D – Available Remedies for the County

Remedies are available related to a contractor's statutory violation or contract breach, resulting from a contractor's non-compliance with the Wage Law.

- The General Conditions, at paragraph 3, expressly require a contractor to comply with all applicable federal, State, and local laws, in general, and the Procurement law and regulations, in particular. Accordingly, any Wage Law violation by CAMCO also would constitute a contract breach, and permit the County to seek legal and equitable remedies for that breach against CAMCO, including seeking damages, seeking injunctive relief, or terminating the contract for default (General Conditions, para. 27).
- In accordance with the authority provided specifically in the Wage Law, at Montg. Co. Code, § 11B-33A (h) (5), the subject Contract, at General Conditions Attachment C, paragraph I., specifies that the County may assess liquidated damages of 1% of the contract value, per day, for each violation of the Wage Law and resulting breach of the contract by CAMCO. These liquidated damages include the amount of any unpaid wages, with interest that results from the noncompliance.
- As required by the Wage Law, the Contract specifies that “an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under [the Wage Law] and recover any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation for asserting a right under [the Wage Law]”. (See Appendix B for excerpts from the law and contracts applicable to statutory or contractual violations that may result from CAMCO’s non-compliance with the Wage Law.)
- The County has the option, in the exercise of its prosecutorial discretion, to seek a notice of violation or a civil citation, and a resulting fine as a Class A violation (\$500 initial offense; \$750 repeat offense) for a contractor’s violation of the Wage Law. See Montg. Co. Code, §§ 1-18 & 1-19.

Appendix E – Office of Procurement and CAMCO Responses

Office of Procurement Response



OFFICE OF PROCUREMENT

Isiah Leggett
County Executive

Cherri Branson
Director

MEMORANDUM

October 21, 2015

TO: William Broglie, Manager
Office of Internal Audit (MCIA)

FROM: Cherri Branson, Director 
Office of Procurement (PRO)

SUBJECT: Audit Report on Wage Requirements Law Compliance – CAMCO, LLC – Office of Procurement Comments

I am in receipt Montgomery County's Internal Audit (MCIA) draft report of CAMCO, LLC and its compliance with wage requirements under the County's Wage Requirements Law. The SC&H Group (SC&H), under contract with MCIA, performed an audit to determine compliance with the aforementioned law. In the draft report for official comment dated October 2015, SC&H found CAMCO, LLC in violation of the County's Wage Requirements Law. Additionally, SC&H identified underpayments to CAMCO, LLC employees of \$1808.20 for 32 months in 2012 through 2015. The pay periods examined by SC&H included a total of 64 pay periods within the pay periods from June 2012 through the start of the audit on January 26, 2015

The following Recommendations are included in the draft audit report:

Recommendation #1: *Determine what remedy or remedies to seek against the contractor for statutory or contract violations arising from noncompliance with the Wage Law. (See Appendix B listing provisions in County law and the Contracts that provide remedy options.)*

Recommendation #2: *In determining an appropriate remedy, including the assessment of liquidated or other damages, consider this audit report and any related calculations needed to quantify the individual and aggregate amounts by which CAMCO, LLC underpaid the required wage amount to covered employees, as a result of its violation of the Wage Law. (See Appendix C for remedy details.)*

Division of Business Relations and Compliance

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OFFICE OF PROCUREMENT

Isiah Leggett
County Executive

Cherri Branson
Director

PRO Comments:

As provided under the County's Wage Requirements Law, this office will require CAMCO, LLC to compensate its employees for underpayments as identified in the report within 15 days after this office receives the final report. To validate CAMCO, LLC issuance and employee receipt of compensation for prior underpayments, this office will request documentation of these payments including, but not limited to, copies of checks. This office will also request CAMCO, LLC to provide documentations on their health insurance plan, in order for us to calculate the amount to be reduced from the employee wages.

This office will also work with the County Attorney's Office to determine appropriate remedies for violations arising from the contractor's noncompliance with the Wage Requirements Law.

I appreciate the time taken and analysis performed by you and the Auditors from SC&H.

cc: Grace Denno, PRO
Jack Gibala, PRO
Pam Jones, PRO
Scott Foncannon, OCA
Rich Melnick, OCA
Fariba Kassiri, ACAO

Division of Business Relations and Compliance

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CAMCO Response

CAMCO, LLC

Multi Service Company

October 21, 2015

Montgomery County, Maryland
Office of the County Executive
Office of Internal Audit

Re: Audit of Wage Requirements Law Compliance Draft Report CAMCO, LLC
comments

- explanation of the “ 121 instances, in which was found that time was not worked on county contracts dis no correspond to payroll record entry for that employee” on Highlights page, is needed
- County executive/contract administrators did not authorize nor world make payment for employees clocking in prior to 6:00am or clocking out after 2:30pm
- clocks used were provided and maintained by the County, Clocks have a time discrepancy of 30 minutes ahead of time, this was brought to the County’s executives and no remedy or correction action was taken by the County, CAMCO received specific orders that this were the only clocks authorized for this contract and anything else used to record employee hours; hours would be rejected
- time keepings records were based on the time cards provided by the County, a basic day was 8 hrs and minutes record more or less if not authorized by the County was not paid or was deducted
- CAMCO provided all the information needed for this audit, if there is anything missing is is custody of Divorce lawyers and ex-spouse. CAMCO is not able to retrieve this records, it can only provide bank images which were provided
- CAMCO paid only two wages, a higher than the current County Living Wage to Supervisors and the current County Living wage for employees classified as Helpers
- In addition to the 30 minutes lunch break, the employees were authorized by the County an 10 minute break at 9:00am
- example employee used in page 9, please provide the information
- employees working under this contract, 90% were inherited from the previous contractor, County executives demanded these employees to be hired, if CAMCO wanted to be awarded the contract, regardless of legal status, experience, and liability this would bring to CAMCO, only two employee were not hired, these two were older than 80 years, and were not physically able to step out of a car to come inside our office to properly fill out an employee application

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- Time accuracy, County did not authorized a work day longer than 8hrs, required that regardless of time once the employees had arrived on site they must clock in. there for caused for several instances that employees clocked in prior to 6:00am
- several times did CAMCO tried to collect payment for extra minutes on the clock to pay employees that had clock in early and every single time this request was rejected, including monthly hourly reports,
- until the month hourly report did not reconcile with the hours count held by the County, payment approval was not made, invoice breakdown were not received and CAMCO invoices could not be process
- CAMCO is in full compliance with the living wage law
- CAMCO in 2012 started to submit quarterly payroll records to the County executives, no indication was made whether or not the information submitted was correct or to the right department, or system
- first audit was preformed, CAMCO was directed to submitted all payroll records, and told to submitted records only to audit firms, no indication was made thereafter
- to CAMCO's understanding payroll record were to be held to be provided to audit firms only, no correction was received from the County
- Audit conclude no indication was received from County to continue submitting quarterly reports
- CAMCO would have provided and submitted all ten quarters of certified payroll records if it had not been told to wait until they were requested by an audit firm
- CAMCO has not under paid any employees
- CAMCO from day one raised the questions about the County's discrepancy timekeeping record and practices
- anything that was happening with the contract and employees, the County was in full agreement otherwise it would have not had renewed the Contract to CAMCO two full additional terms
- CAMCO complied three full terms with this contract at no given time was there any indication that CAMCO practices were not in compliance
- every end of term CAMCO was awarded a renewal therefore giving agreement and indication that CAMCO was and continues to be in compliance with all of the contracts terms, binding laws, living wage law, and conditions.
- Note: when County is mention, we refer to the County Executives CAMCO was working with under this Contract

Best regards,

Julio Arce
CAMCO, LLC

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MCIA EVALUATION: Following receipt of CAMCO's October 21, 2015, comments on the draft audit report, MCIA provided CAMCO's comments to the Department of Transportation ("DOT"), the Office of Procurement ("Procurement"), and the Audit Firm for their review. Their comments are summarized below. Following MCIA's review of these comments, MCIA has determined that no changes to the audit report or its findings and recommendations are warranted.

TRANSPORTATION

1. The County paid CAMCO for the time during the shifts for which CAMCO (the contractor) was required to provide services under the County contract. If the Contract shift started at 6 a.m. and a CAMCO employee punched in at 5:45 a.m., the County paid CAMCO based on the Contract shift start time of 6 a.m. Similarly, if the Contract shift ended at 2:30 p.m., and a CAMCO employee punched out at 2:45 p.m., the County paid CAMCO based on the Contract shift end time of 2:30 pm. In the few instances when the County required services to be performed beyond the normal Contract shift end time, the County compensated CAMCO in accordance with the Contract, for additional time it required beyond the end of the shift time.
2. DOT (the Parking office) monitored the time clocks and adjusted the time if needed to ensure accuracy. Also, the time clocks had a battery backup. DOT never received any complaint from a CAMCO supervisor, or otherwise, indicating that the time clocks were in error.
3. CAMCO decided to use the timestamp information from the timecards CAMCO employees turned into CAMCO supervisors to prepare its monthly employee time reports (spreadsheets) and the invoices that CAMCO submitted to the County. This was an excellent checks and balances system. The County reviewed CAMCO's monthly employee time report and compared it against the CAMCO employee timecards; if CAMCO's monthly employee time report and the employee timecard information did not match, DOT contacted CAMCO to advise CAMCO of the difference, and the need to discuss the discrepancy. After DOT and CAMCO agreed on a reconciliation of the information, CAMCO prepared and submitted to the County a reconciled/revised monthly employee time report along with a reconciled invoice.
4. The County never demanded or pushed CAMCO to hire any of the previous contractor's employees. Employees of the previous contractor asked the County to inform CAMCO of their interest in staying on if CAMCO wanted to hire them to perform work under CAMCO's new contract with the County. The County shared this information with CAMCO prior to the effective date of CAMCO's contract with the County. CAMCO representatives visited the County's facilities and spoke to the previous contractor's employees prior to the start of CAMCO's contract, and invited interested workers who had performed services for the previous contractor to come to CAMCO's office to be interviewed. It was fully CAMCO's decision to meet or speak with, invite, interview, hire, direct, schedule, pay, or take any other action regarding workers it may have considered or employed to fulfill its obligations to the County under the Contract.

PROCUREMENT

1. The first, preliminary audit in this matter started 3 months into the County's Contract with CAMCO, before the first quarterly Wage Requirements Law Payroll Report Form (PMMD-183; "quarterly payroll report") was due. That preliminary audit lasted more than one year (August 17, 2012 – October 4, 2013). During that time, the County notified CAMCO to submit all payroll reports and other required documents to the Audit Firm. The Audit Firm stated in its preliminary audit report that it did not receive all requested payroll reports and documents from CAMCO. (See Preliminary Audit Report, dated October 4, 2013). CAMCO's failure to keep and submit

records demonstrating CAMCO's compliance with the WRL is again noted in the current full-scope audit report.

2. Between the completion of the first audit and the start of the second audit in February 2015, there was a gap of 14 months (4 quarterly payroll report periods). The County's contract with CAMCO required submission of the quarterly payroll report at the end of each quarter. During the term of the County's contract with CAMCO, the County sent notices to CAMCO each quarter, as a part of the County's routine notification process to contractors subject to the Wage Requirements Law, seeking submission of the required quarterly payroll report.
3. CAMCO did not submit to Procurement the required quarterly payroll reports for any of the quarters during the term of the County's Contract with CAMCO, during either (a) the initial one-year contract term, or (b) the two subsequent one-year renewal periods.

AUDIT FIRM

1. CAMCO requested an explanation of the Audit Firm's statement [p. 10 of the audit report] that "in 121 of those 439 [potentially testable] instances, we found that time was worked on the County contract for which CAMCO did not provide corresponding payroll records for those employees/instances." This statement means that the Audit Firm identified 121 instances where the Audit Firm received from the County timekeeping spreadsheets containing time entries for CAMCO employees, which CAMCO and the County had reconciled, but that CAMCO failed to provide payroll records that corresponded to the hours worked by those CAMCO employees for the same time periods.
2. For the purposes of the Audit Firm's testing, it used the hours that CAMCO and the County reconciled and reflected on the CAMCO employee timekeeping spreadsheets that the County provided to the Audit Firm. Any CAMCO underpayment amount to an employee that the Audit Firm calculated was the result of the hours reflected on those employee timekeeping spreadsheets and the payroll records provided by CAMCO. As such, CAMCO's various comments concern issues that do not impact the Audit Firm's scope of work or its test results.
3. CAMCO did not provide the Audit Firm with a list of documentation that was in the possession of any other outside parties. The audit firm attempted to utilize all documentation that was made available to it – including CAMCO's payroll records, and the uncategorized, miscellaneous papers that were provided to the Audit Firm in large cardboard boxes at the CAMCO facility.
4. The example provided on page 9 of the audit report was intended for illustrative purposes only, and was not based on a specific instance of underpayment.
5. The Audit Firm reviewed CAMCO's remaining comments and determined that there were no statements by CAMCO – including those related to the timecards, time clocks, etc. – that would have impacted the Audit Firm's scope of work performed or the test/audit results.