

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



Audit of Wage Requirements Law Compliance

Securitas USA

October 21, 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 Sheriff's Office has a contract with Securitas USA, Inc. (Securitas), to provide security guard services.

In February 2015, Procurement requested that the Office of Internal Audit (MCIA) perform a Wage Law audit of Securitas covering all of its employees who perform work in Montgomery County, to include the months of June 2014, July 2014, December 2014, and January 2015. The audit was conducted by the accounting firm SC&H, under a contract with MCIA.

What MCIA Recommends

MCIA is making three recommendations to Procurement dealing with the determination of the relief to seek against Securitas for statutory or contract violations arising from noncompliance with the Wage Law.

October 2015

Audit of Wage Requirements Law Compliance – Securitas USA

What MCIA Found

Securitas did not comply with the Wage Law in all instances. Based on the information that was provided to us by Securitas, and the testing criteria provided to us by the Office of Procurement (Procurement), Securitas underpaid its employees in 6 of 362 instances that we were able to test². This resulted in a total underpayment of \$34.47. In addition, our testing was limited by isolated instances in which we were not able to obtain all necessary documentation to complete our testing. Specifically, our testing identified 3 instances (of the 365 available instances) in which there was no evidence of employee wages included on the payroll registers that Securitas provided for our testing; however, the employees' hours worked were included in the contractor's time reporting software system (SAFES) reports or manual timesheets that the County provided after receiving from Securitas for the corresponding time periods. Securitas' inability to provide payroll records for these three isolated instances is, itself, a violation of County Wage Law requirements. In addition, Securitas did not provide documentation to support its reduction of the hourly wage paid under the Wage Law to cover the employee hourly cost of the employer's share of the health insurance premium.

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 six instances in which employees were underpaid occurred during the weeks associated with the July 17, 2014 and July 31, 2014 pay dates. An increase to the County-required wage rate from \$13.95 per hour to \$14.15 per hour took effect on July 1, 2014.

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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 with the Wage Law by Securitas USA, Inc. (Securitas), a County contractor.

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 June 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, 2013 – June 30, 2014	July 1, 2014 – June 30, 2015
\$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.

Securitas 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 Securitas in 2013, 2014, and 2015 were approximately \$682 thousand, \$1.7 million, and \$1.2 million, respectively. Also, since Securitas is not recognized as a not-for-profit organization,

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

neither the nonprofit organization exemption, nor the accompanying opt-in election to comply with the Wage Law, are applicable.

Securitas' application 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 was accepted by the County. 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 Securitas
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); see also 11B-33A (c).	Yes
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 the Wage Law, a contractor must indicate at the time of, and in, its bid or proposal (on the Wage Requirement Certification Form), 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 requirements⁴). In addition, Per the Wage Law, 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.

As a part of Securitas' proposal, Securitas applied for a wage rate reduction up to \$1.50/hr based on the portion of the health insurance premiums that it paid on behalf of its employees. The County accepted Securitas' application to reduce the required hourly wage rate by up to \$1.50/hr, and incorporated by reference this allowable reduction in the County's contract with Securitas. Beginning January 1, 2015, Securitas reduced the wages of employees who performed work for the County by \$0.72/hr, to cover the cost of the health insurance premiums paid by Securitas to the benefit of its employees. [NOTE: No previous reduction for the cost of health insurance premiums had been applied.]

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).⁵

Contractor Selected for Audit

Procurement requested the MCIA to perform a Wage Law audit of Securitas covering all of its employees who perform work in Montgomery County, for the months of June 2014, July 2014, December 2014, and January 2015. In response, MCIA directed its audit contractor, SC&H, to audit Securitas' compliance with the Wage Law.

⁴ Montg. Co. Code, § 11B-33A (c)(1).

⁵ Montg. Co. Code, § 11B-33A (h)(1) (A) - (C).

Scope and Methodology

Wage Compliance Scope and Methodology

At the request of the County, we reviewed Securitas' compliance with the Wage Law for the months of June 2014, July 2014, December 2014, and January 2015. We requested that Securitas provide us with timekeeping and payroll documentation to support 100% of the payroll periods for each of the months selected for testing.

Payroll Population

To evaluate Securitas' practices, and its compliance with the Wage Law requirements, we first conducted interviews with members of Securitas management to gain an understanding of time-keeping practices, payroll procedures, and fees deducted from employee pay. We also requested documentation for each of the pay periods that occurred during the months of June 2014, July 2014, December 2014, and January 2015. 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 nine pay periods within the in-scope time period of June 2014, July 2014, December 2014, and January 2015. Securitas provided us with payroll registers for each pay period. 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 Securitas 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 Securitas, we also obtained the source timesheets completed by all Securitas employees each week, as well as the time reporting software system reports that are agreed upon by both the employee and their Securitas supervisor, and help reconcile the employee's pay each period.

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	Securitas employees record time through the use of timesheets. Securitas uses the hours from the timecards to populate a time reporting software system (SAFES).
Wages paid to employees for payroll periods selected for testing	Received, with Limited Exceptions	With the exception of three isolated instances, Securitas provided employee wage support documentation for each of the nine payroll periods selected for testing (362 of 365 records received).

Documentation and/or Information Requested	Document and/or Information Received	Comments
Detail of deductions taken from employee gross pay by type of deductions and amounts for each employee for payroll periods selected for testing	Received, with Limited Exceptions	With the exception of three isolated instances, Securitas provided the detail of deductions taken from employee gross pay by type of deductions and amounts for each employee for each of the nine payroll periods selected for testing (362 of 365 records received).

Based on the payroll information provided by Securitas, we had payroll data for a total number of 362 testable instances (total employee instances from the payroll records/periods provided for which both payroll and timekeeping records were made available).

Employee Wages

Securitas 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.

Note: As previously stated, the County accepted Securitas’ request to reduce the required hourly wage rate by up to \$1.50/hr. Beginning January 1, 2015, Securitas reduced the hourly wages paid to its employees by \$0.72/hr, to cover the cost of the health insurance premiums paid by Securitas to the benefit of its employees. For the selected pay periods occurring throughout January 2015, we reduced the applicable wage rate by \$0.72/hr to cover the cost of the health insurance premiums paid by Securitas. As such, the wage rate used in the January 2015 wage rate compliance calculations was as follows:

$$\$14.15 \text{ (applicable wage rate)} - \$0.72 \text{ (wage rate reduction)} = \$13.43/\text{hr}$$

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 timesheet on which they handwrite the start time each morning and ending time each night. At the end of each week, the employees each sign off on the timesheets to verify the accuracy of the hours that they entered, and the Securitas supervisor also signs off on the bottom of the timesheet as evidence that he/she agrees with, and the contractor and its workers have reconciled any discrepancies regarding, the hours included on the timesheet for each employee.

Following each week, Securitas loads these handwritten timesheets into the time reporting software system (SAFES). Once the information has been loaded into the system, the employee and the Securitas supervisor each review, reconcile, and sign off on the hours for the period.

For the purposes of our testing, we utilized the SAFES reports as the basis for the hours that we used in our calculations. The SAFES hours for each period were selected because they represented the uploaded employee submitted hours. However, when the SAFES report hours were not provided, we used the employee handwritten timesheet hours in our calculations as the employee entered, approved, and submitted these hours each week.

Hourly Wage Calculation

In each instance that we tested, our methodology for computing employee hourly rates by which to determine Securitas' 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,"⁶ and dividing by the employee's "Regular Hours"⁷ reported for that period to determine the Hourly Wage Rate for each employee for that period. The Regular Hours were taken from the SAFES time reporting system reports (and, where applicable, the handwritten timesheets).

Testing

In order to determine whether Securitas 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. For the pay periods that occurred during January 2015, we reduced the required wage rate by \$0.72 to reflect the wage rate reduction for Securitas' payment of employee health care premiums, for which they received a waiver from the County. As noted above, beginning January 1, 2015, Securitas reduced the hourly wages paid to its employees by \$0.72/hr, to cover the cost of the health insurance premiums paid by Securitas to the benefit of its employees.

Each instance where the Hourly Wage Rate that an employee was paid by Securitas was less than the County's required Wage Law 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 Reported 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 Securitas for our testing.

Example (1 Employee):

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

⁶ "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.

⁷ "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.

Findings

Wage Law Compliance

Based on the information that was available to us for testing, our review found that Securitas did not comply with the County's Wage Requirements Law in 6 of the 362 instances tested (approximately 1.7%). These instances of non-compliance resulted in a total underpayment in the amount of \$34.47. See Appendix A for the total amount of underpayment, per employee.

Based on our findings that 6 employees (comprising the 6 instances within the 362 instances) were underpaid by Securitas, the average amount of underpayment was calculated as \$5.75 for each employee who was underpaid.

$$\$34.47 / 6 = \$5.75$$

We noted that the six instances in which employees were underpaid occurred during the weeks associated with the July 17, 2014 and July 31, 2014 pay dates. A change to the wage rate took effect on July 1, 2014 that changed the County-required Wage Rate from \$13.95 per hour to \$14.15 per hour. We further noted that in each instance, the hourly wage rate that we calculated would have been sufficient to exceed the County's previous required Wage Rate that was in effect prior to July 1, 2014.

Payroll Documentation

With the exception of three instances in which Securitas failed to provide payroll information for employees who accrued hours worked for the County, we found that Securitas complied with the County's requirement to "keep and submit any records necessary to show compliance." Our testing identified 3 instances (of the 365 available instances) in which there was no evidence of employee wages included on the payroll registers that Securitas provided for our testing; however, the employees' hours worked were included on the Securitas SAFES reports or handwritten timesheets that the County provided us for the corresponding time periods. In these instances, we were unable to complete our assessment of Securitas' compliance with the County's Wage Requirement Law, as there was insufficient information to perform a calculation since the employee wages were not included on the payroll registers Securitas provided.

Table 5 – Underpayment Computations Based on Nine Payroll Periods Provided by Securitas

Securitas Wage Law Rate Review	
Total Number of Payroll Periods Requested:	9
Total Number of Payroll Periods Received:	9
Using The Regular Earnings Provided by Securitas and the Timekeeping Spreadsheets Provided by Montgomery County	
Hours Reported on Timekeeping Records, No Corresponding Payroll Report Entry:	3
Number of Records <u>At or Above</u> the Required Wage Law Rate:	356
Number of Records <u>Below</u> the Required Wage Law Rate:	6
<u>Total Dollar Value of Underpayment:</u>	\$34.47

Average Amount of Underpayment, by Employee	
Dollar Value of Underpayment Based on Information Provided:	\$34.47
Average Amount of Underpayment, by Employee based on 6 Employees:	\$5.75

Average Amount of Underpayment, per Instance	
Average Amount of Underpayment, by Employee	\$5.75
Average Amount of Underpayment, per Instance based on 6 Instances	\$5.75

Wage Rate Reduction – Calculation / Justification

As part of Securitas’ original response to the RFP to provide security guard services to the County, it provided a completed “Wage Requirements Certification” as part of its proposal. The Wage Requirements Certification indicated a Wage Requirements Reduction based on Securitas’ desire to reduce its hourly wage paid under the Wage Law to cover the employee hourly cost of the employer’s share of the health insurance premium. On the Wage Requirements Certification, Securitas indicated a reduction of \$1.50 per hour.

The approved contract between the County and Securitas states that “The Contractor’s proposal in response to RFP # 1019397...” is “...incorporated by reference into and made part of...” the contract.

We could find no evidence that Securitas provided justification or calculation of the wage rate reduction to the County, either as part of its proposal or subsequently. At the request of the County, as part of our review we attempted to assess the validity of the \$0.72/hr wage rate reduction that Securitas implemented in January 2015. As part of our assessment, we requested that Securitas provide us with the calculation that was used to arrive at the \$0.72/hr cost per employee for their share of the premium for health insurance. We also requested that Securitas provide us with the source documents that contained the information that they used to perform the calculation and arrive at the \$0.72/hr amount. Securitas did not provide us with either the calculation that they used to determine the per-employee hourly cost of the employer’s share of the premium for health insurance, nor did they provide us with the source documentation needed to support that amount. As such, we are unable to conclude on the appropriateness or the accuracy of the amount by which Securitas is reducing employee wages.

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 B listing provisions in County law and the Contract 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 Securitas underpaid the required wage amount

to covered employees, as a result of its violation of the Wage Law. (See Appendix C for remedy details.)

3. Take action to assure that Securitas complies with all Wage Law requirements including:
 - a) assuring that all Securitas employees who perform work on Montgomery County contracts are paid at least the required Wage Law Rate in accordance with Montgomery County Code § 11B-33A;
 - b) assuring that Securitas maintains and submits to the County payroll records, in accordance with Montgomery County Code § 11B-33A(h)(1)(B);
 - c) assuring that Securitas timely submits its required quarterly certified payroll report to the County on a consistent basis; and
 - d) assuring that Securitas designs and implements a process to identify and validate its proper payment to all of its employees who perform work on Montgomery County contracts each period – including the justifications for, and amounts of, any deductions taken from employee pay.

Comments and MCIA Evaluation

We provided the Office of Procurement and Securitas with a draft of this report for review and comment on October 5, 2015. We received a response from the Office of Procurement on October 15, 2015. The Office of Procurement indicated that it will take action to require Securitas to compensate its employees for underpayments as identified in the report within 15 days after receiving the final report. The Office of Procurement said it will request documentation of these employee payments including, but not limited to, copies of checks to validate these back payments. Further, the Office of Procurement indicated that it will work with the County Attorney's Office to determine appropriate remedies for violations arising from the contractor's noncompliance with the Wage Requirements Law (see memo included in Appendix D). Securitas replied in an email dated October 19, 2015 that questioned the missing documentation, provided a potential explanation for the incidents of underpayment that were identified, and reiterated its inability to provide the County with confidential documentation that could support the hourly cost of their health care benefits (see email included in Appendix D).

Appendix A – Total Underpayment Amount per Employee

Employee Number	Total Underpayment
1	\$0.80
2	\$2.80
3	\$0.89
4	\$6.00
5	\$8.99
6	\$14.99
Grand Total	\$34.47

Appendix B – 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 C – 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 Securitas also would constitute a contract breach, and permit the County to seek legal and equitable remedies for that breach against Securitas, 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 Securitas. 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 Securitas’ 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 D – Office of Procurement and Securitas Responses

Office of Procurement Response



OFFICE OF PROCUREMENT

Isiah Leggett
County Executive

Cherri Branson
Director

MEMORANDUM

October 15, 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 – Securitas USA – Office of Procurement Comments

I am in receipt Montgomery County's Internal Audit (MCIA) draft report of Securitas USA 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 Securitas USA in violation of the County's Wage Requirements Law. Additionally, SC&H identified underpayments to Securitas employees of \$34.47 for 4 months in 2014 and 2015. The pay periods examined by SC&H included a total of nine pay periods within the time period of June 2014, July 2014, December 2014, and January 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 Securitas USA 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

Recommendation #3: Take action to assure that Securitas USA complies with all Wage Law requirements including:

- a) assuring that all Securitas USA employees who perform work on Montgomery County contracts are paid at least the required Wage Law Rate in accordance with Montgomery County Code § 11B-33A;
- b) assuring that all Securitas USA payroll records are appropriately retained, in accordance with Montgomery County Code § 11B-33A(h)(1)(B);
- c) assuring that the required quarterly certified payroll report is submitted to the County on a consistent basis; and,
- d) assuring that Securitas USA designs and implements a process to identify and validate all of the employees who perform work on Montgomery County contracts each period

PRO Comments:

As provided under the County's Wage Requirements Law, this office will require Securitas USA to compensate its employees for underpayments as identified in the report within 15 days after this office receives the final report. To validate Securitas USA's 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 Securitas USA 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
Karen Federman-Henry, OCA
Rich Melnick, OCA
Fariba Kassiri, ACAO

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Securitas Response

From: Lauren.Gornish@securitasinc.com [<mailto:Lauren.Gornish@securitasinc.com>]
Sent: Monday, October 19, 2015 1:34 PM
To: Broglie, William
Cc: Sammy.Mwanjala@securitasinc.com
Subject: Draft Audit of Wage Compliance - Securitas USA

Bill,

Thank you for forwarding the audit report and presenting us with the opportunity to address the results. The report raises three points to which I'd like to respond.

1. We were not able to provide pay documentation for 3 of 365 requested employees.

The Branch Manager overseeing our account with Montgomery County worked closely with our Vice President of Human Resources, the Maryland Area HR Manager and then-Maryland Area Vice President in collecting and providing all of the necessary documentation and our understanding was that everything requested had been received. If we are provided with the names of the 3 affected employees and the missing information, we will be happy to look into this further and make every effort to get what you need.

2. Of the 362 employees therefore included in the study, 6 were effectively underpaid.

We believe there are two potential factors contributing to this aberration: 1) The Montgomery County mandated living wage had increased by \$.20 two weeks prior to these infractions taking place. Our work at Montgomery County is billed and paid through our payroll system on several separate contracts. It is possible that we missed a couple of contracts in our payroll software when entering the wage updates. 2) Some of our employees do not work full time at the Montgomery County contract, but instead work a number of hours there and a number of hours at other, lower paid contracts. This could result in their effective wage being lower than the mandated minimum Montgomery County Government wage.

3. We have not provided to the County any documentation supporting how we arrived at \$.72 as the appropriate hourly reduction to cover our health care costs.

As was likely communicated previously, the hourly cost of our ACA-compliant health benefits was calculated and established at a national level based upon employee participation, employee contribution (which is based upon average wages), and the cost charged to Securitas USA, including associated fees. These charges were negotiated with our providers and are confidential as dictated by our agreements with them, and as such they are not made available to us.

Please feel free to reach me by email or at either number below, and I will be happy to assist with any questions or concerns on these or other points. We look forward to continuing our relationship with the County.

Best,

Lauren Gornish | Area Vice President
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