

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



**Audit of Wage Requirements Law Compliance
Potomac Disposal, Inc.**

October 2, 2014

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 Department of General Services (DGS) Office of Business Relations and Compliance (OBRC) is responsible for monitoring compliance with the Wage Law. The County's Department of Environmental Protection (DEP) has contracts with Potomac Disposal, Inc. ("Potomac Disposal"), to provide residential refuse and recycling collection services.

In September 2013, Potomac Disposal workers went on strike, for reasons that included employees claiming that they were not paid the wage amount required by the law. DGS conducted an abbreviated audit in October 2013 and found some violations in the firm's payroll records examined. As a result, DGS requested the Office of Internal Audit (MCIA) to perform a full Wage Law audit of Potomac Disposal covering all of its employees, for all pay periods between May 2011 and November 2013. The audit was conducted by the accounting firm SC&H, under a contract with MCIA.

What MCIA Recommends

MCIA is making two recommendations to DGS dealing with the determination of the remedy or remedies to seek against Potomac Disposal for statutory or contract violations arising from noncompliance with the Wage Law. DGS said it will take action to require Potomac Disposal to compensate its employees for underpayments as identified in the report, Potomac Disposal told us it would not comment on the report.

OCTOBER 2014

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What MCIA Found

Potomac Disposal, Inc, did not comply with the Wage Law. Potomac Disposal underpaid drivers and helpers by a total of \$5,394 during the length of the contracts. Potomac Disposal underpaid drivers by \$3,042 and helpers by \$2,352. This resulted in underpayments to 29 of 94 drivers and 20 of 118 helpers, ranging in amounts from less than a dollar to \$425. Additionally, we found that Potomac Disposal did not retain proper documentation (timecards, etc.) as required by the Wage Law to support the hourly wages of all employees working under the County contracts.

We also evaluated the adequacy of the invoicing process within the County's Department of Environmental Protection (DEP). We found no errors in DEP's invoicing of Potomac Disposal, and concluded that invoicing controls are operating effectively.

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Objectives

This report summarizes an audit performed by SC&H Group under contract with the 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 Potomac Disposal Inc., a County contractor, with the Wage Law. SC&H Group also reviewed the invoices paid by the County to Potomac Disposal under the two (2) contracts held by Potomac Disposal. The term for performance under the first contract (0808000122) held by Potomac Disposal commenced on May 9, 2011, and ends on May 12, 2018. The second contract (0808000123) commenced on August 8, 2011 and its term for performance ends on August 11, 2018.

This internal audit report 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 2014 to July 2014.

Background

Wage Requirements Law

The County Council passed, on June 11, 2002, and the County Executive signed on June 20, 2002, Bill 5-02, 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 1 – Living Wage Rate

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

Contractor Certification of Wage Law Compliance

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 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. The following table details the exemptions or reductions, and optional compliance, for which a

contractor may qualify under the Wage Law. Potomac Disposal did not qualify for exemption status because, at the time of contract execution, it was estimated that the payments received under the contract would exceed \$50,000. Potomac Disposal is contracted through the Montgomery County Department of Environmental Protection (DEP) to provide residential refuse and recyclable materials collection. The Montgomery County DGS-OBRC is responsible for monitoring compliance with the Wage Law. Payments made to Potomac Disposal in 2011, 2012, and 2013 were \$4.5 million, \$5.9 million and \$4.6 million, respectively. Also, since Potomac Disposal is not recognized as a not-for profit organization, neither the nonprofit organization exemption nor the opt-in election are applicable. In addition, Potomac Disposal could not reduce the required wage amount below Wage Law requirements by subtracting the employer's share of the employees' health insurance premium it was paying, because Potomac Disposal 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 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 employee based on the "per-employee hourly cost of the employer's share of the premium". See Montg. Co. Code, § 11B-33A (d) & (e).

Table 2 – Allowable Wage Law Exemptions, Reductions and Optional Compliance

Type	Name	Description
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).
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).
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).

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).
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Qualifications for Allowable Reduction to the Required Wage Law Amount

In order to qualify for the allowable health insurance reduction to 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 requirements¹). 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 that health insurance. The contractor also must indicate the amount of any reduction it will take from the Wage Law rate amount paid to employees². 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 premium³.

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 employer must conspicuously post notices informing employees of the wage requirements. Further, the contractor must submit quarterly certified payroll reports to the Department of General Services' (DGS) Office of Business Relations and Compliance (OBRC)⁴.

Contractor Selected for Audit

¹ Montg. Co. Code, § 11B-33A (c) (1).

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

³ "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).

⁴ Montg. Co. Code, § 11B-33A (h) (1) (A) - (C).

In September 2013, Potomac Disposal workers went on strike, based on reasons that included employees claiming that they were not paid the Living Wage as required by the law. DGS conducted an abbreviated audit in October 2013, and found some violations in the firm's payroll records examined. As a result, DGS requested the Office of Internal Audit (MCIA) to perform a full Wage Law audit of Potomac Disposal, covering all of its employees, for all pay periods between May 2011 and November 2013. In response, MCIA directed its audit contractor, SC&H, to audit Potomac Disposal's contract with the County, focusing on compliance with the Wage Law and invoicing under the contract. Potomac Disposal holds two (2) contracts with Montgomery County for Service Area 1 (contract number 0808000122) and Service Area 4 (0808000123). The Service Area is that portion of the unincorporated area of the County defined by map within each of the contracts. Service Area 4 consists of approximately 19,518 dwelling units, and Service Area 1 consists of approximately 21,023 dwelling units. Following the strike Potomac Disposal and the union entered into a collective bargaining agreement. The Wage Law, Montg. Co. Code § 11B-33A (f)(4), does not apply to any employee "for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement". Therefore employees of Potomac Disposal are no longer subject to the Wage Law for hours worked after November 1, 2013.

Scope and Methodology

Wage Compliance Scope and Methodology

We reviewed Potomac Disposal's compliance with the Wage Law for the time period of May 2011 through November 2013. The below information provides a summary with regard to the scope and methodology applied throughout the audit. Payroll processing for Potomac Disposal is outsourced to ADP.

To evaluate Potomac Disposal's practices, and its alignment with the Wage Law requirements, we first conducted interviews with Potomac's Controller, to gain an understanding of time keeping practices, payroll procedures, and fees deducted from employee pay. We also obtained the ADP Payroll Register for all periods within the scope of the audit. Potomac Disposal maintains separate Payroll Registers for "County workers" (employees that work on County contracts) and for "private workers."

From reviewing the ADP Payroll Register, we determined that, during the scope of the audit, 212 Potomac Disposal workers had completed work for the County. Of those 212 workers, 94 were employed as drivers and 118 were helpers. In addition, one employee had begun work as a helper and was later promoted to a driver. The drivers drive the trucks while the helpers walk along and pick up the refuse and recyclables. The drivers pick up the trucks at Potomac Disposal and meet the helpers at their assigned route. At the completion of all refuse or recycling pick up, the helper is finished for the day. The driver then takes the truck to the refuse drop off site, and returns the truck to Potomac Disposal. Also, per conversation with Potomac Disposal management, we determined that during the period selected, typically only drivers completed timecards. Employees were paid a set salary each week, meaning the hourly wage would have to be determined by dividing the gross pay amount by the number of hours worked. Workers are paid on a weekly basis. Per discussion with Potomac Disposal management, we were able to determine that drivers worked an average of two (2) hours greater than helpers per day.

Our methodology for computing helpers' hourly rates was to determine the average time per week worked by all drivers and then subtract ten (10) hours (2 hours for each day). Once we

determined the average hours worked by the helpers, we divided the gross pay for each helper from the ADP Payroll Register by the average hours. In addition, for drivers that did not have a timecard, we used the average from all drivers to determine the hourly wage earned by those drivers. We then tested all employee rates to determine if the hourly wage rate was in compliance with the Wage Law. Our methodology was shared and agreed-upon by Potomac Disposal prior to the commencement of testing.

To evaluate the invoicing process, we obtained all invoices paid under the contracts from May 2011 through October 2013, from Montgomery County's Division of Solid Waste Services (DSWS) within the DEP. We examined a sample of the invoices to determine whether (1) the invoice calculations were reasonable and accurate, (2) supporting documentation which was required by the contract was submitted with the invoice,(3) unallowable costs did not appear to be included in invoice submission, (4) invoices were properly signed and approved by department designated individual, and (5) invoice rates agreed to contracted rates.

Potomac Disposal has a contract with the County for two service areas within Montgomery County from which it collects refuse or recycling. Each contract contains information regarding the fee structure that Potomac Disposal charges the County. Collection fees are based on a contracted dollar rate multiplied by a specified number units (or number of homes).

- As part of the contractual agreements, Potomac Disposal collects two main types of solid waste:
- Refuse: standard solid waste (e.g. trash cans); bulk trash
 - Recycling: blue bin (e.g. glass, cans, paper, etc.); scrap metal (at least 51% metal); yard trim

Each of the solid waste types (refuse and recycling) are invoiced separately, on a monthly basis. As a result, the County typically pays four invoices for each month (two contracts X two solid waste types). Upon receiving the invoices, representatives in the DEP-DSWS's Collection Section perform multiple levels of review procedures prior to processing and paying them.

To perform the evaluation, and to determine the operational effectiveness of the invoicing process, we first inquired with DEP personnel regarding the procedures that DEP uses. We also wanted to gain assurance that Potomac Disposal is performing the services pursuant to the contracts. We judgmentally selected a sample of 45 invoices, including samples that appeared to be susceptible to error.

Table 3 lists the documentation and information we requested from Potomac Disposal officials for our review and the success we had.

Table 3- Documents and Information Requested

Documentation and/or Information Requested	Document and/or Information Received	Comments
Timecards for April 2011 to November 2013	Partial	The timecards show the punch in and out time for each employee per day. Potomac Disposal (PD) did not have or give us timecards for the period of May 7, 2011 through July 15, 2011, and for October 4, 2013. In addition PD did not have or give us 1,144 timecards for 84

Documentation and/or Information Requested	Document and/or Information Received	Comments
		drivers over the scope of the audit.
Wages paid to employees April 2011 to November 2013	Yes	PD provided us with copies of pay instruments (canceled checks, check stubs or payroll registers). Payment to employees was supported by the presentation of one of the documents listed above.
Detail of deductions taken from employee gross pay by type of deductions and amounts for each employee	Yes	.PDF versions of the ADP Payroll Register showing all deduction details, including healthcare deductions, were obtained for all periods.
Wage Law Payroll Report Submission	No	PD did not provide documentation to OBRC, and PD did not have or give us these reports.

Wage Compliance Sample Selection

Employee Pay Rate Testing

All “county workers”, both drivers and helpers, were selected for testing and all pay periods between May 2011 and November 8, 2013, were included in the testing.

Invoice Testing

We selected a sample of 45 invoices from May 2011 through October 2013, to evaluate the accuracy and completeness of charges to the County. The invoices evaluated had a total dollar value of \$4,119,561.45.

Findings

Our review found that Potomac Disposal did not comply with the Wage Law with respect to 47 of its employees. The employee gross (i.e., prior to any deductions) wage as documented in Potomac Disposal pay records reflected a gross wage amount that was less than the wage required on the respective pay date, as set by the Wage Law. Discrepancies in the wage amount paid by Potomac Disposal ranged from \$.01 per hour to as much as \$10.70 per hour. We identified underpayments to 29 of 94 drivers and 20 of 118 helpers, resulting in underpayments of \$3,042, and \$2,352, respectively.

Included in the amounts above is \$52 by which Potomac Disposal reduced three drivers’ wages below the Wage Law, by deducting health premiums from employees without seeking or qualifying for a Wage Law reduction amount for an employer’s share of a health insurance premium. This resulted in an underpayment of \$52. The total for all underpayments identified

was \$5,394 during the life of the contracts. See Appendix A for calculation details of wages below the applicable wage rate.

In addition to the \$5,394 of underpayments identified in Appendix A, we identified approximately \$25,754 in wage payments that initially appeared to also be underpayments pursuant to the Wage Law. In discussing this with Potomac Disposal officials, however, they explained that these wages were paid to employees that had worked part-time during the applicable pay periods. Therefore, the officials stated that, in computing these employees' wage rates we needed to divide the total weekly wages by fewer hours to account for the part-time service. We reviewed the explanations, as well as trends for the number of hours these employees usually worked, and concluded that the explanations appeared reasonable. We did not report these instances as underpayments; however, definitive evidence to support compliance with the Wage Law for these instances was not maintained or provided by Potomac Disposal.

We also found that Potomac Disposal did not retain proper documentation (timecards, etc.) that is required by the Wage Law to support the hourly wages of all employees working under the County contracts. Potomac Disposal did not have, or give us, timecards for the period of May 7, 2011 through July 15, 2011 and the October 4, 2013 timecards. In addition, Potomac Disposal did not have, or give us, timecards for 1,144 instances related to 84 drivers and 3,766 instances related to 118 helpers.

Paragraph A., of The Wage Requirements Certification form, which is signed and submitted by a contractor as an addendum to all Montgomery County contracts, requires a covered employer to submit payroll information certifying compliance with the Wage Law each quarter. We determined, through discussion with Potomac Disposal and confirmation with DGS, that Potomac Disposal had never submitted any of the certifications.

Regarding our testing of DEP processing of invoices for payment from Potomac Disposal, we determined that invoice calculations were reasonable and accurate, supporting documentation which was required by the contract was submitted with the invoice, unallowable costs did not appear to be included in invoice submission, invoices were properly signed and approved by department designated individual, and invoice rates agreed to contracted rates.

Recommendations

Director, Department of General Services:

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.)
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 Potomac Disposal

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

Comments and MCIA Evaluation

We provided the DGS and Potomac Disposal with a draft of this report for review and comment on September 5, 2014. We received a response from DGS on September 12, 2014. DGS indicated that it will take action to require Potomac Disposal to compensate its employees for underpayments as identified in the report, within 15 days after receiving the final report. DGS said it will request documentation of these employee payments including, but not limited to, copies of checks to validate these back payments (see memo as Appendix D). Potomac Disposal replied on September 29, 2014 that they would not be submitting comments.

Appendix A – Net Wage Pay Difference Calculations for Helpers

Table A1 – Net Wage Pay Difference from Applicable Required Wage of \$13.20 for FY 11, \$13.25 for FY 12 and \$13.65 for FY 13 (Helpers)

Employee Number	Earnings Total	Period Start	Timecard Hours	SCH Calculated Hours	HR Rate	Daily Wage Amount	Number of Days Worked	HR Rate Adj.	Adjusted Aggregate Underpayment
1	400.00	08/10/13	32.00	N/A	12.50	80.00	5.00	18.18	46.40
2	425.00	10/26/13	35.00	N/A	12.14	85.00	5.00	17.00	63.25
3	187.50	08/04/12	N/A	23.32	8.04	62.50	3.00	13.40	130.82
3	312.50	08/11/12	N/A	23.32	13.40	62.50	5.00	13.40	5.82
4	255.00	07/27/13	35.50	N/A	7.18	85.00	3.00	7.18	240.23
5	130.00	09/28/13	N/A	23.32	5.57	65.00	2.00	13.94	195.31
6	150.00	10/12/13	11.00	N/A	13.64	75.00	2.00	21.43	3.45
7	260.00	10/12/13	N/A	23.32	11.15	65.00	4.00	13.94	65.31
8	675.00	03/19/11	52.50	N/A	12.86	135.00	5.00	12.86	18.00
9	425.00	08/24/13	32.00	N/A	13.28	85.00	5.00	19.32	21.40
9	425.00	08/31/13	30.50	N/A	13.93	85.00	5.00	20.73	0.47
10	375.00	08/10/13	34.50	N/A	10.87	75.00	5.00	15.31	106.28
10	375.00	08/24/13	28.00	N/A	13.39	75.00	5.00	20.83	15.60
10	375.00	08/31/13	27.50	N/A	13.64	75.00	5.00	21.43	8.62
10	150.00	09/07/13	14.50	N/A	10.34	75.00	2.00	14.29	52.28
10	375.00	09/14/13	34.00	N/A	11.03	75.00	5.00	15.63	99.30
11	400.00	08/10/13	29.50	N/A	13.56	80.00	5.00	20.51	11.53
12	160.00	10/12/13	12.50	N/A	12.80	80.00	2.00	18.82	14.38
13	400.00	05/26/12	36.50	N/A	10.96	80.00	5.00	15.09	81.80
13	300.00	08/24/13	22.50	N/A	13.33	75.00	4.00	20.69	13.88
13	75.00	10/12/13	7.00	N/A	10.71	75.00	1.00	15.00	22.65
14	500.00	03/19/11	38.00	N/A	13.16	100.00	5.00	17.86	1.60
14	500.00	03/19/11	40.50	N/A	12.35	100.00	5.00	16.39	34.60
14	500.00	03/19/11	45.50	N/A	10.99	100.00	5.00	14.08	100.60
14	500.00	03/19/11	41.50	N/A	12.05	100.00	5.00	15.87	47.80
15	350.00	08/10/13	31.50	N/A	11.11	70.00	5.00	16.28	89.43
15	350.00	08/24/13	27.00	N/A	12.96	70.00	5.00	20.59	26.65
16	400.00	08/10/13	31.50	N/A	12.70	80.00	5.00	18.60	39.43
16	400.00	08/17/13	32.50	N/A	12.31	80.00	5.00	17.78	53.38
16	400.00	08/24/13	32.50	N/A	12.31	80.00	5.00	17.78	53.38
16	400.00	08/31/13	31.00	N/A	12.90	80.00	5.00	19.05	32.45
16	560.00	09/07/13	48.00	N/A	11.67	80.00	7.00	16.47	109.60
17	375.00	10/05/13	30.50	N/A	12.30	75.00	5.00	18.29	50.48
18	375.00	08/17/13	32.00	N/A	11.72	75.00	5.00	17.05	71.40
18	375.00	08/24/13	35.00	N/A	10.71	75.00	5.00	15.00	113.25
18	375.00	08/31/13	30.00	N/A	12.50	75.00	5.00	18.75	43.50
18	150.00	09/07/13	15.50	N/A	9.68	75.00	2.00	13.04	66.23
18	375.00	09/14/13	30.50	N/A	12.30	75.00	5.00	18.29	50.48
18	300.00	10/05/13	25.00	N/A	12.00	75.00	4.00	17.65	48.75
18	225.00	10/26/13	21.50	N/A	10.47	75.00	3.00	14.52	74.93
19	520.00	03/19/11	41.50	N/A	12.53	130.00	4.00	15.52	27.80
Total									2,352.46

Appendix A – Net Wage Pay Difference Calculations for Drivers

Table A2 – Net Wage Pay Difference from Applicable Required Wage of \$13.20 for FY 11, \$13.25 for FY 12 and \$13.65 for FY 13 (Drivers)

Employee Number	Earnings Total	Period Start	Timecard Hours	SCH Calculated Hours	HR Rate	Daily Wage Amount	Number of Days Worked	HR Rate Adj.	Adjusted Aggregate Underpayment
1	520.00	10/27/12	41.50	N/A	12.53	130.00	4.00	12.53	46.48
2	390.00	03/19/11	51.00	N/A	7.65	130.00	3.00	7.65	283.20
2	650.00	03/19/11	50.00	N/A	13.00	130.00	5.00	13.00	10.00
3	650.00	06/30/12	50.50	N/A	12.87	130.00	5.00	12.87	84.33
4	650.00	10/19/13	55.50	N/A	11.71	130.00	5.00	11.71	124.23
5	576.00	10/27/12	47.00	N/A	12.26	144.00	4.00	12.26	65.55
6	157.50	03/31/12	19.50	N/A	8.08	130.00	1.21	8.08	154.90
6	128.00	05/12/12	16.00	N/A	8.00	130.00	0.98	8.00	138.20
6	124.00	05/19/12	15.50	N/A	8.00	130.00	0.95	8.00	135.60
6	80.00	05/26/12	10.00	N/A	8.00	80.00	1.00	8.00	107.00
7	600.00	03/19/11	48.50	N/A	12.37	120.00	5.00	12.37	40.20
7	600.00	02/18/12	46.50	N/A	12.90	120.00	5.00	12.90	13.80
7	600.00	03/03/12	45.50	N/A	13.19	120.00	5.00	13.19	0.60
8	433.36	03/16/13	34.00	N/A	12.75	130.00	3.33	12.75	30.74
9	390.00	09/14/13	30.00	N/A	13.00	130.00	3.00	13.00	28.50
10	260.00	09/07/13	23.50	N/A	11.06	130.00	2.00	11.06	67.83
11	260.00	08/11/12	22.00	N/A	11.82	130.00	2.00	11.82	40.30
12	650.00	10/27/12	48.50	N/A	13.40	130.00	5.00	13.40	12.03
12	650.00	11/17/12	49.00	N/A	13.27	130.00	5.00	13.27	18.85
13	650.00	09/07/13	49.50	N/A	13.13	130.00	5.00	13.13	40.53
14	130.00	03/19/11	13.00	N/A	10.00	130.00	1.00	10.00	41.60
15	260.00	03/19/11	21.00	N/A	12.38	130.00	2.00	12.38	17.20
16	650.00	03/19/11	53.50	N/A	12.15	130.00	5.00	12.15	56.20
16	650.00	06/30/12	50.00	N/A	13.00	130.00	5.00	13.00	32.50
17	650.00	10/27/12	48.00	N/A	13.54	130.00	5.00	13.54	5.20
18	650.00	11/10/12	48.50	N/A	13.40	130.00	5.00	13.40	12.03
19	650.00	03/19/11	49.50	N/A	13.13	130.00	5.00	13.13	3.40
19	650.00	03/19/11	51.50	N/A	12.62	130.00	5.00	12.62	29.80
19	650.00	10/27/12	75.50	N/A	8.61	130.00	5.00	8.61	425.58
20	650.00	06/23/12	52.00	N/A	12.50	130.00	5.00	12.50	59.80
20	650.00	10/27/12	49.00	N/A	13.27	130.00	5.00	13.27	18.85
20	390.00	11/03/12	33.50	N/A	11.64	130.00	3.00	11.64	67.28
21	675.00	06/30/12	51.00	N/A	13.24	135.00	5.00	13.24	21.15
22	650.00	11/17/12	48.00	N/A	13.54	130.00	5.00	13.54	5.20
22	390.00	07/27/13	32.00	N/A	12.19	135.00	2.89	12.19	56.40
22	470.00	08/10/13	34.50	N/A	13.62	135.00	3.48	13.62	11.28
22	277.00	08/17/13	36.50	N/A	7.59	135.00	2.05	7.59	232.18
22	298.00	08/24/13	27.50	N/A	10.84	135.00	2.21	10.84	85.63
23	520.00	03/19/11	39.50	N/A	13.16	130.00	4.00	13.16	1.40
23	650.00	06/09/12	55.50	N/A	11.71	130.00	5.00	11.71	82.60
23	650.00	06/23/12	51.50	N/A	12.62	130.00	5.00	12.62	52.98
23	650.00	06/30/12	51.50	N/A	12.62	130.00	5.00	12.62	52.98
23	520.00	09/08/12	39.00	N/A	13.33	130.00	4.00	13.33	12.35
24	390.00	11/03/12	32.50	N/A	12.00	130.00	3.00	12.00	53.63
25	700.00	06/08/13	57.50	N/A	12.17	140.00	5.00	12.17	84.88
26	405.00	10/06/12	31.50	N/A	12.86	135.00	3.00	12.86	24.98
Total									2,989.87

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 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.
- 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 Potomac Disposal also would constitute a contract breach, and permit the County to seek legal and equitable remedies for that breach against Potomac Disposal, 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 Potomac Disposal. 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 Potomac Disposal's non-compliance with the Wage Law.)

Appendix D – DGS Response



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

David E. Dise
Director

MEMORANDUM

September 12, 2014

TO: Larry Dyckman, Manager
Office of Internal Audit (MCIA)

FROM: David Dise, Director 
Department of General Services (DGS)

SUBJECT: Audit of Wage Requirements Law Compliance Potomac Disposal, Inc. –
Department of General Services Comments

I am in receipt of Montgomery County's Internal Audit (MCIA) draft report of Potomac Disposal, Inc. and its compliance with wage requirements under the County's Wage Requirements Law. SC&H Consulting (SC&H), under contract with MCIA, performed an audit to determine compliance with the aforementioned law. In addition, the audit firm reviewed invoices paid by Potomac Disposal, Inc. In the draft report for official comment dated September 5, 2014, SC&H issued findings that Potomac is in violation of the County's Wage Requirements Law and identified total underpayments to its employees of \$5,394 for the periods between May 2011 and November 8, 2013.

The following two 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 Potomac Disposal underpaid the required wage amount to covered employees, as a result of its violation of the Wage Law. (See Appendix C for remedy details.)

Office of the Director

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montgomerycountymd.gov/311  240-773-3556 TTY

Appendix D – DGS Response

Formal Response to MCIA Audit – Potomac Disposal
September 12, 2014
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DGS Comments:

As provided under the Living Wage Law, the department will require Potomac Disposal, Inc. to compensate its employees for underpayments as identified in the report, within 15 days after receiving the final report. DGS will request documentation of these employee payments including, but not limited to, copies of checks to validate these back payments.

I appreciate the time taken and analysis performed by you and the auditors from SC&H to investigate compliance with the Living Wage Law.

cc: Grace Denno, Department of General Services
Beryl L. Feinberg, Department of General Services
Jack Gibala, Department of General Services
Pam Jones, Department of General Services
Karen Federman-Henry, Office of the County Attorney