

FY14 Prevailing Wage Law Annual Report

Executive Summary

Beginning with contracts executed on July 1, 2009, Montgomery County's Prevailing Wage Law is modeled after the Federal Davis-Bacon and State of Maryland's Prevailing Wage laws. The Prevailing Wage Law mandates that workers on qualified County construction projects be paid Prevailing Wage for their work classification. The Prevailing Wage Rate is the rate paid for comparable work in the private sector within the County. The rates are calculated by the State, based on surveys of construction company employers.

FY14 marks the fifth year of operation of the Prevailing Wage Law. During FY14, Montgomery County monitored a total of 26 projects and 78 task orders, including 3 federally funded projects; 18 County Department of General Services projects; 4 County Department of Transpiration projects and 1 project for the Department of Environmental Protection. Montgomery County also monitored the County Site Work contract, a task order driven contract with projects around the County. A total of 33 construction projects and task order projects were closed out during FY14.

Contractor Compliance and Monitoring, Inc. (CCMI), the County's compliance contractor, completed its fifth year of providing labor compliance services to the County amidst a flurry of construction activity. During this year, CCMI monitored three federally funded projects. CCMI provided labor compliance services on eighteen County Department of General Services projects, four County Department of Transpiration projects and one project for the Department of Environmental Protection. CCMI also provided labor compliance services on the County Site Work and Storm Water Management contracts, task order driven contracts with projects at various locations in the County. CCMI's compliance efforts include the launching of eighteen investigations during the year. These investigations varied in their size and scope and their results demonstrated the need for the County to be vigilant in its oversight of construction contracts subject to the County's Prevailing Wage Law. A total of eleven construction projects and twenty-two task order projects were closed out during the year. CCMI assessed liquidated damages in the amount of \$717,870 for misclassification and late submission of payrolls. CCMI continued providing guidance to the County in its ongoing effort to refine and enhance the enforcement of the County's Prevailing Wage Law. Attached is CCMI's annual report to the County, including detailed reports on all projects and observations on industry trends.

Montgomery County, Maryland Labor Compliance Annual Report Fiscal Year 2014



Overview:

Montgomery County Maryland implemented its Prevailing Wage Law in July 2009. Contactor Compliance and Monitoring Inc. was hired to assist the County in implementing this program. Since its inception, CCMI and the County have worked together to create the following policies, practices and protocols:

1. An audit process to specifically address the requirements of the County's Prevailing Wage law;
2. The educational aspect of labor compliance at the Preconstruction Conferences (including creating a specific handout for projects funded by County funds and a separate handout with tailored information relating to federally funded projects - Davis-Bacon);
3. A monthly process of auditing payrolls and providing prompt feedback to contractors and the County's Prevailing Wage Program Manager;
4. An onsite interview format and report tailored to the provisions of the County's Prevailing Wage law;
5. Drafts of documentation for final project close out, draft of final report to Director and addressing due process appeal rights of contractors with County;
6. Updated forms, processes and protocols as the County's labor compliance program matured and best practices were established.

Scope of Services Provided:

Work with Montgomery County to ensure proper language for Labor Compliance is in all contracts:

Status: Completed. Discussion and sample language provided to the Prevailing Wage Program Manager to be considered for County contracts, including prevailing wage language and language mandating the use of LCPTracker for the submission of electronic payrolls.

Work with Maryland County to utilize appropriate federal language and Davis Bacon wage determination for ongoing projects:

Status: Ongoing, for each new Davis Bacon funded project, CCMI consults with the County to identify the proper Davis Bacon wage determination for each project.

Conduct LCP Training at Preconstruction Conference meetings.

Status: On going. At least one preconstruction conference meeting is provided for each project. In a few instances when projects were started before CCMI was notified, CCMI quickly coordinated with the prime contractor on these projects and offered to provide a separate meeting to review prevailing wage requirements on the project. In a few instances on very long projects, more than one meeting per project was held to provide information to subcontractors who are beginning work later on the project and did not have the opportunity to receive this information at the project start time.

Provide a phone line and e-mail contact where contractors and subcontractors can contact for clarification on prevailing wages, certified payrolls, and apprenticeship and compliance issues.

Status: On going. There are two full time employees dedicated as lead staff members to the Montgomery County projects: Jessica Finau and Steven Noguera. Three other staff members assist Finau and Noguera with audits, investigations and other issues which might arise. Deborah Wilder, President of CCMI, is also available to consult on any issue or provide additional assistance.

Check state licenses and worker's compensation.

Status: On going. This requirement is only set forth in certain County contracts and is checked for those contracts only.

Monitor of all apprenticeship requirements.

Status: On going. This verification occurs on all projects for all workers listed as apprentices. Both Maryland State regulations and Davis-Bacon regulations require that apprentices must be enrolled in a properly recognized apprenticeship program; all apprentices must be supervised by a journeyman-level worker in the same trade; and apprentices must be employed at one to one ratio to allow for proper supervision of on-the-job training. Apprentices who work on County financed projects must be registered in a program approved by the Maryland Apprenticeship Training Council. CCMI verifies that the apprentice is enrolled in such a program.

Audit certified payrolls forms monthly.

Status: On-going. Audits are conducted on every project, every month, for every employee, for every contractor and every subcontractor. This includes comparing the classification and wage rate listed on the certified payroll with the applicable Montgomery County rate, reviewing the amount of fringe benefit contribution claimed and verifying that the contractor/ subcontractor has properly calculated these amounts, verifying that any overtime and holiday time is properly paid, comparing daily reports and monthly interview sheets with the certified payrolls and identifying any deficiencies.

Review Daily Jobsite Reports.

Status: On going. This is done periodically on a project-by-project basis. The frequency of this review depends on the length of the project, the number of subcontractors, the number of employees, whether serious potential underpayments have been identified, or other issues that may arise during the course of the project.

Visit job sites and interview workers.

Status: On going. Each month CCMI visits each jobsite at least once and interviews various workers. The number of the workers interviewed depends on the size of the project, the number of subcontractors on the project and any potential claims of under-reporting of hours/employees or misclassification. While the workers are selected randomly, CCMI does attempt to interview one or more workers from each subcontractor working on the project over the course of the project. In FY14, CCMI conducted more than 1,441 interviews on 40 projects.

Investigate misclassification issues.

Status: On going. Investigations are conducted when CCMI receives information either as a result of review of certified payrolls and related documentation, through employee interviews or independent contact by employees that proper wages are not being paid. See separate section on investigations in this report.

Most investigations have focused around the misclassification of workers or a contractor's failure to list and/or pay employee(s) on certified payrolls the proper prevailing wage rate.

Audit subcontractors.

Status: On going. In order to promote efficient compliance with the law on the project, any deficiency identified must be communicated promptly to the prime contractor on each project. The prime contractor then contacts any applicable subcontractor regarding missing documentation, underpayment or other deficiencies listed in the audit. To help expedite this process, a separate audit for each subcontractor is prepared to allow the contractor to then quickly turn this audit around to the affected subcontractor.

Each audit details the certified payrolls which were reviewed, any missing or deficient documentation, identification of any underpayment of wages and other outstanding issues. If documentation or clarifications were previously requested and not addressed by the

subcontractor, this information is also noted on this report. The audit also includes the total amount of any outstanding liquidated damages for the late submission of payrolls.

These audits are sent each month to both the County and the prime contractor for each project. The prime contractor is asked to distribute these reports to their subcontractors and to follow up by providing the missing or corrected information to CCMI within 30 days.

An additional matrix summary of the projects, a report for each project and an expanded narrative of CCMI's activity was developed last year and provided to the County each month.

Communicate potential violations with recommended action.

Status: On going. In addition to the monthly reports outlined above, CCMI is in regular contact several times a week with the Prevailing Wage Program Manager regarding unresolved issues and investigations being conducted.

Communicate with all contractors on regular basis.

Status: On going. CCMI works with all contractor and subcontractors with the goal of amicably resolving issues related to violations, penalties and compliance. CCMI has daily individual phone calls, conference calls, emails and/or facsimile communications with contractors and subcontractors regarding these issues.

Report to Montgomery County at Project Completion.

Status: On going. At the close of each project, a final report is sent to the County. The report details, by contractor and subcontractor, each prevailing wage violation identified; the steps CCMI took during its audit and/or investigative process; a narrative of the violation and any special circumstances; a discussion of the remedy (restitution); whether that restitution has been made by the effected contractor; and a recommendation to the Director of the Department of General Services regarding the imposition of liquidated damages.

For federally funded (Davis-Bacon) projects, CCMI performs similar, but not identical services:

1. Confirm the Davis–Bacon wage determination applicable to each project. The County is responsible for inserting the appropriate Davis Bacon language in the bid specifications and construction contract.
2. Conduct an onsite meeting with Contractors to review Davis-Bacon requirements for prevailing wages on the project.
3. Provide a copy of the Davis Bacon required postings for contractors to post on the jobsite.
4. Collect and review certified payroll and related documents each month from contractors. Review certified payrolls for proper wages and fringe benefits paid. Compare Davis-Bacon prevailing wage requirements to certified payroll to ensure that the proper wages

and fringe benefits are paid. While Davis-Bacon wage rates and work classifications are identical in many instances, they are NOT always so.

5. Collect “certifications” for all apprentices working on the project (who must be enrolled in an approved Bureau of Apprenticeship Training (DOL) apprenticeship program).
6. Conduct monthly jobsite visits interviewing employees on the project to verify proper prevailing wages are paid and verifying that the appropriate Davis-Bacon poster is posted on site.
7. Provide the County with an audit on prevailing wage compliance/deficiencies on a monthly basis.
8. Provide Prime contractor with monthly audits and detailed information relating to any missing documentation or deficiencies in Davis Bacon prevailing wage compliance requirements.
9. Conduct additional investigations as may be warranted by payrolls and interviews.
10. Work with contractors to ensure full compliance with prevailing wage and apprenticeship requirements.
11. Imposition of penalties (only as required).
12. Issue a Project Completion Report to the County at conclusion of project.

Provide additional Services: CCMI continues to provide additional assistance, including a discussion of procedures, protocols and forms for the administration of the County’s Prevailing Wage program. Among these are enhancements to the preconstruction handout information, monthly audits to contractors and the final close out procedure and due process requirements for the contractors. CCMI has worked with the County Prevailing Wage Program Manager and County staff to discuss and, when appropriate, recommend or draft/updated materials, forms, and procedures for the administration of this program.

Projects:

During Fiscal Year 2014, CCMI provided Labor Compliance Services for 104 projects and task orders in Montgomery County.

Federally Funded Projects:

East Gude Drive Bridge Rehabilitation (DOT)
Silver Spring Transit Center (DGS)
Long Branch Walkway & Pedestrian Bridge (DHCA)

These projects include federal funding and are subject to the federal Davis Bacon and Related Acts for prevailing wage compliance.

County Projects:

Department of General Services:

3rd Dist. Police Station
Animal Shelter
Equipment Maintenance & Operations Center
Dennis Avenue Health Center
Department of Liquor Control Warehouse
Gaithersburg Library Renovation
Judicial Center Annex
MCPS-Food Distribution Relocation
North Potomac Recreation Center
Olney Library Renovation
Plum Gar Recreation Center
PSTA-Webb Track
Public Safety Headquarters
Salt Barn
Scotland Recreation Center
Silver Spring Library
Travilah Fire Station #32
White Oak Recreation Center

Department of Transportation:

Century Boulevard
Garage #7 Renovation
MacArthur Bikeway
Sidewalk at Dale Drive

Department of Environmental Protection:

Stoney Creek Storm Water Management

Task Orders:

401 Hungerford Garage Restoration
ADA Parking Spaces-2950EW
ADA Pool Lifts
Bethesda Depot Roof Replacement
Briggs Chaney Parking Lot-2950FE
Brookville Center Signs
Brookville Bus Depot-Pump & Clean Baysaver System
Brookville Bus Depot SWM
Business District Concrete Repair
Clarksburg Liquor Store
CNG Fueling Facilities
Curb & Gutter Replacement
D&F-ADA Program (countywide)
D&F-Asphalt Repairs Silver Spring Urban District
D&F-Bikeshare Pads
D&F-Bus Stop Improvement Program (countywide)
D&F-Guardrails along County Roads
D&F-Kings Valley Drive
D&F-Sidewalk Program (countywide)
D&F-Storm Drain Improvements-Easley Avenue & Houston Street
D&F-Whites Ferry Road
D&F-Repairs on Mainline
D&F-Sligo Hills LID
D&F-Storm Drain Repairs
D&F-Travilah Road-Phase 2-sidewalk/bikepath
Demo Liquor Warehouse-2950EN
Dennis Avenue
Donnybrook
Emergency Storm Drain Replacement Mullinix Mill
Fire Arms
Fire Station #20-2950EX
Fire Station-#28
Flower Avenue Liquor Store
Franklin Knolls
Germantown Transit Center
Glenmont Fire Station #18
Health & Human Services
Holiday Park Senior Center
HSS2950EB-Engineering Sediment Controls
HSS2950EF-Rte 355 & Collins Drive
HSS2950EQ-Exterior Paving Surrounding Fire Stations
HSS2950ES-Fire Station #24
HSS2950EY-Demp Phase 3-County Service Park
HSS2950FF-Demo Gaithersburg Maintenance Depot
HSS2950FJ-Ken Gar Community Center

HSS2950FQ-Grading of Phase 1 area (liquor store)
HSS2950FT-Germantown Marc Parking Lot
HSS2950FV-Hillandale Fire Station
HSS2950GA-PreRelease Center
HSS2950GB-100 Edison Park
HSS2950GM-Piccard Drive Concrete Landing
HSS2950-3100 Hollywood Branch
Leland Senior Center
Overlay of Primary and Arterial Roads
Parking Garage Paint
Permanent Paint of Parking Lot-2950EP
Piccard Drive-2950FN
PreRelease Center-2950FB
PreRelease Center Shed Repairs-2950FR
Red Brick Courthouse-2950EL
Replacement Concrete-Business Districts Countywide
Residential Resurfacing
Roadway Patching
Scotland Rec
Seneca Meadows Liquor Store
Sidewalk Construction
Silver Spring Library Utility Work
Silver Spring Tech Road Parking Lot-2950FD
Slurry Seal Group 1
Slurry Seal Group 2
Storm Water Management Layhill Ponds
Supply Install Trailers-2950DR
Tenbrook/Breewood & Amherst
Utility Disconnect Liquor Warehouse-2950DV
Watts Branch SWM
Wayne Avenue-2950FS
Whites Ferry Road Bridges
White Oak Repairs

Projects Closed Out:

East Gude Drive Bridge Rehabilitation
Animal Shelter
Dept. of Liquor Control Warehouse
Equipment Maintenance & Operations Center
Gaithersburg Library
Plum Gar Recreation Center
Public Safety Headquarters
Stoney Creek Storm Water Management
White Oak Recreation Center
ADA Parking Spaces-2950EW

Briggs Chaney Parking Lot-2950FE
Business District Concrete Repair
Clarksburg Liquor Store
Demo Liquor Warehouse-2950EN
Fire Station #20-2950EX
Fire Station #28
Glenmont Fire Station #18
Health & Human Services
Leland Senior Center
Parking Garage Paint
Permanent Paint on Parking Lot-2950EP
Picard Drive-2950FN
PreRelease Center-2950FB
PreRelease Center Shed Repairs-2950FR
Red Brick Courthouse-2950EL
Salt Barn
Seneca Meadows Liquor Store
Sidewalk at Dale Drive
Silver Spring Tech Road Parking Lot-2950FD
Supply Install Trailers-2950DR
Utility Disconnect Liquor Warehouse-2950DV
Wayne Avenue-2950FS
White Oak Repairs

Investigations:

CCMI conducted investigations on 18 contractors performing work on the 13 projects identified below. An investigation is more than review of deficiencies and the seeking of corrective action. This alone can take several months and requires the review of additional documentation, verification of restitution, etc. An investigation is launched when CCMI receives information that employees are not being paid the correct prevailing wage rate, are not paid for all hours worked (underreporting of hours), are not being paid overtime, or are being paid in the wrong wage category (misclassification).

An investigation may include contacting each of the employees listed on the certified payrolls via letter (in both English and Spanish), asking them a series of questions about the type of work they perform and the hours worked on the project and asking them to respond if they believe they were not paid the correct wages or paid for all hours worked. These “letters to workers” are not a routine form, but are tailored to address the situation with each subcontractor under investigation. For those employees who respond to our letters or have already spoken with CCMI during onsite interviews, CCMI calls these employees and verifies the additional information. (These conversations are held in English or in Spanish).

An investigation frequently includes requesting additional documentation from the contractor or subcontractor and then reviewing timecards, pay stubs and cancelled checks and cross checking that information against the certified payrolls submitted. At times, CCMI also requests copies of Daily Job Logs from the prime contractor, particularly in instances where CCMI actually interviewed an employee on the jobsite, but that employee does not appear on the certified payrolls.

3rd District Police Station & Plum Gar Recreation Center-Subcontractor-Daly Masonry

This subcontractor did not pay employees in full for all wages due to the fact they were going out business. The prime contractor, Keller Brothers, had known of the financial difficulties for some time and, therefore, had withheld sufficient funds to pay all wages due to employees.

3rd District Police Station-Subcontractor-Climate Control Heating & Cooling

This subcontractor was taking fringe credit for auto allowance and cell phones given to employees. CCMI clarified these were not valid fringe deductions and the subcontractor corrected the issue.

3rd District Police Station-Subcontractor-Solutions General

This subcontractor paid employees in cash and was unable to prove certain disputed amounts were paid to workers. The higher tier contractor (Shanco Companies) retroactively paid the employees from their own funds, as verification of compliance on project.

3rd District Police Station-Subcontractor-American Construction Associates

This subcontractor was writing checks to employees for several weeks with insufficient funds in the bank account. CCMI and the prime contractor, Keller Brothers, worked together to

ascertain information from employees about last week of work paid in full. Prime contractor issued restitution payment to all employees.

Olney Library Renovation-Subcontractor-American Construction Associates

This subcontractor was writing checks to employees for several weeks with insufficient funds in the bank account. CCMI and the prime contractor, Milestone Construction, worked together to gain information from employees about last week of work paid in full. Prime contractor issued restitution payment to all employees.

Olney Library Renovation-Subcontractor JRA Contracting

CCMI interviewed employee Eddie Porras performing work of a Plumber in December 2012, although the certified payroll for that week indicated he was an Unskilled Laborer. The following month the subcontractor contacted CCMI regarding the monthly audit requesting restitution for employee. Subcontractor stated that employee was “using a trowel to secure sleeves with mortar”, which they did not believe to be Plumbing work. CCMI confirmed that this was indeed Plumbing work, as the employee was using Plumbers tools and performing duties of such trade. For several months, no further response was received. In April 2013, CCMI received a letter from subcontractor stating they did not agree with the assessment, but would agree to pay the funds due and to contact them regarding what was needed. Prior to sending a response to the subcontractor, in May 2013, CCMI updated the monthly audit to request restitution pay for all hours worked by Eddie Porras as Plumber. Employees working on the project took video and pictures of Eddie Porras working as a Plumber and gave them to the CCMI investigator during the May site visit. These other employees had no affiliation with JRA Contracting but confirmed that Eddie Porras was performing Plumbing duties. These employees confirmed that Eddie Porras had always worked as a Plumber on the project. CCMI received no response from JRA Contracting regarding this issue. Eddie Porras did inform the CCMI investigator that he was sent home from work shortly after CCMI had submitted the wages due worksheet to prime contractor, in July 2013, for Eddie Porras. After a few weeks, he was called back to work and listed on the payrolls as an Apprentice. CCMI then requested the registration form for Eddie Porras to verify his enrollment in the Maryland Training and Apprenticeship Council from JRA Contracting. No proof of registration was provided by the time the project was closed out, so all wages due to Eddie Porras were calculated at the full journeyman rate and shown as outstanding wages due on the Project Completion Report submitted to the County.

Gaithersburg Library Renovation-Subcontractor-Bethesda Asphalt

An employee of this subcontractor contacted CCMI regarding possible underpayment of wages. The employee faxed a few pay stubs to CCMI to review against payrolls. At this time, the subcontractor was not set up online to use LCPTracker system. CCMI contacted prime contractor, Henley Construction, to get subcontractor up to date on submitting labor compliance information. After a few weeks, all payrolls were accounted for and CCMI requested the pay stub details, showing hours and pay rates, as well as canceled checks to verify the information found online. All information online was verified. Employee was confused on how to read their pay stubs due to several line items listed. Contractor was showing payment for project as part of regular hours worked each week and then adding a different line item for the difference in prevailing wage rate. CCMI contacted employee to discuss and close investigation.

Gaithersburg Library Renovation-Subcontractor-Gryphon Tile

Employees reported to CCMI that they were working six days per week with no overtime pay. CCMI requested daily logs from Henley and sent letters to employees for further clarification in December 2013. Daily logs from Henley do not show any Saturdays worked throughout project. Seven of the ten letters were returned unopened by February 2014. CCMI dropped this issue due to lack of response from employees in March 2014.

Gaithersburg Library Renovation-Subcontractor-JP Construction

The CCMI investigator received information from employees that confirms same schedule as Animal Shelter/JCA/EMOC 6:30-3:15 Monday-Thursday and 6:30-2:30 Friday =.5 hour OT due per week. CCMI requested retro-pay for all employees at .5/hour week for overtime wages due. JP Construction stated that the evidence was incorrect and employees did not work any time for which they were unpaid. They later stated that they did their own internal investigation and no employees reported being unpaid for time worked. No retro-pay was issued by the time project was closed out, so outstanding wages due for overtime showed on the Project Completion Report provided to the County

Equipment Maintenance & Operations Center-Subcontractor-B&R Roofing

The CCMI investigator observed Millwrights doing Pipefitting/Steamfitting work onsite in March 2013. This issue was reported to the subcontractor in their monthly audit for corrective action. The subcontractor's company accountant called CCMI to state that employees were not doing Steamfitting work because they were not working with high pressure steam and that was what determined "Steamfitters" scope of work. Additionally, the accountant stated that the employees knew that Steamfitters were paid the highest rate on the project and that's why they were saying this was type of work performed when interviewed. The accountant stated that employees had been called in for questioning and had told him that the inspector had just pulled the employees aside, asked them some questions, and then walked away. CCMI informed the accountant that its investigator had observed employees performing Pipefitting/Steamfitting duties. CCMI clarified that Steamfitting and Pipefitting were the same classification on the wage determination used for this project site and employees had been doing Pipefitting, and, therefore, needed retro-pay. The scope of work for Millwrights does allow for any pipefitting work. CCMI requested and reviewed the scope of services from Coakley & Williams and found some other trades, i. e. electrical and plumbing, which have not been reported on any payroll records. In August of 2013, CCMI requested from B&R Roofing clarification on the monthly audit and retro-pay for employees doing these types of unreported trades. No response received for several months. New B&R Roofing payroll personnel took over and CCMI exchanged several calls and emails with them to discuss these issues. In December of 2013, the new payroll personnel indicated that they were going to re-audit all work done by previous payroll person (Owen) and submit to CCMI a worksheet of the corrections needed. As of June, 2014, this issue was still unresolved. The Project Completion Report shows wages outstanding for one employee who CCMI knew for certain had been misclassified and underpaid.

Equipment Maintenance & Operations Center-Subcontractor-JP Construction

CCMI received information from employees that confirms same schedule as Animal Shelter/Gaithersburg Library/JCA 6:30-3:15 Monday-Thursday and 6:30-2:30 Friday =.5 hour overtime due per week. CCMI requested retro-pay for all employees at .5/hour week for

overtime wages due. JP Construction stated that the evidence was incorrect and employees did not work any time for which they were unpaid. They later stated that they did their own internal investigation and no employees reported being unpaid for time worked. No retro-pay was issued by the time the Project Completion Report was issued, so outstanding wages due for overtime were reported therein.

Equipment Maintenance & Operations Center-Subcontractor-Gryphon Tile

Employees interviewed by CCMI stated they were working 6 days/week but not paid any overtime. CCMI sent letters to employees requesting further clarification. CCMI requested daily logs from Coakley & Williams. Daily logs from Coakley & Williams do not show any Saturdays worked and 7 of the 10 employee letter were returned unopened. The issue dropped due to lack of employee response.

Equipment Maintenance & Operations Center-Subcontractor-Merc Construction

Several employees interviewed by CCMI stated that they were shorted 2-5 hours per week and not paid appropriate prevailing wages for hours worked. CCMI requested timecards, check stubs and canceled checks to verify information as reported online via LCPTracker for hours worked and pay rates. All information appeared to match. CCMI sent additional letters to employees' home addresses in order to get further detail about shortage of hours and wages. It appears some employees were actually JP Construction employees and a separate investigation was launched on that company. This investigation was dropped due to lack of employee response.

Equipment Maintenance & Operations Center-Subcontractor-Parkinson Construction

Per onsite inspection, work being performed by Laborer-Mason Tenders was always classified as Unskilled Laborers on the payroll records. CCMI generated a spreadsheet of all Unskilled Laborers hours for misclassification of employees. Letter was reviewed by County and sent out to Nigel Parkinson, with a spreadsheet of funds to be paid, in November 2012. CCMI and the County had much correspondence with Harold Hamlette, Sr. VP, throughout the month of December. CCMI had requested Daily Logs to cross reference with certified payroll records submitted online. The daily logs, filled out by the Superintendent, showed that hours worked by "Unskilled Laborers" were same dates and hours which employees had been observed and interviewed as performing Laborer-Mason Tender duties. In February 2013 there was a meeting with the County, Parkinson, and, via teleconference, CCMI, during which Parkinson stated that their records were correct and employees had not been misclassified or underpaid. County attorney issued a letter to Parkinson in April informing them to issue retro-pay to all Unskilled Laborers as Laborer-Mason Tenders. Parkinson has yet to issue any restitution funds to employees, but did hire legal counsel. Several employees were let go in March after adjusted spreadsheet was run and forwarded to Parkinson. Investigation concluded when State of Maryland retroactively changed the Laborer-Mason Tenders pay rate in July 2013. CCMI dropped all outstanding wages due, except for Donald Wilson who had been classified as an Apprentice Bricklayer on the daily logs and not registered in the state, therefore should have been paid at full journeyman scale for all hours worked. On instructions from the County, the total liquidated damages would be withheld for all employees because of the intentional misclassification and attempt at underpayment.

Equipment Maintenance & Operations Center-Subcontractor-US Construction

Employees reported to CCMI in December 2012 they were being paid \$15/hour for all hours worked. Additionally, many stated that they worked overtime, 48 hours/week, but were only paid for 40 hours. Check stubs detail and canceled checks were requested and submitted; all seemed to be in order. Additional interviews were done by CCMI to clarify the matter in January 2013. Some pay stubs were submitted by employees showing the \$15/hour pay rate and bi-monthly payments, whereas the certified payroll records show payments issued weekly. The check stub details submitted by employees show check numbers that do not correspond to the numbering system submitted online. In February 2013, CCMI requested two additional weeks of documents from subcontractor, in an attempt to match signatures for employees week to week. In March 2013 CCMI requested bank statements from subcontractor to see which checks have cleared their account. CCMI believes the subcontractor is printing the backs of \$15/hour checks offline and photocopying front of LCPTracker reported checks to prove they have canceled checks as requested. In April 2013 CCMI received bank statements for several months. CCMI requested further detail on specific check numbers for which dollar values did not match online payroll records and these specific canceled checks not cleared. CCMI then requested in May 2013 all bank statements for project to verify against payrolls online. Monthly audits contained requests for canceled checks not cleared per bank statements, plus clarification on why some cleared checks have amounts that don't match certified payroll information. (July 2013) Duplicate check numbers were issued for different employees/amounts. Apparently, they ordered the checks twice per information given to CCMI via email in August of 2013. Employees confirm have never received any retro-pay for misclassification as Roofers, though US Construction has submitted stubs and canceled checks showing they had been paid. One possibility is that the company is signing the employees' names to the backs of the check and telling bank the company is cashing the checks for employees who do not have accounts. Then, the company could deposit all cash into unseen account and transferring funds into the account which are then forwarded to CCMI for review. CCMI met with employees to get valid signatures. In September 2013, CCMI created a worksheet showing all wages due for the duration of the project for all employees at the Carpentry rate due for metal composite siding. CCMI shared this worksheet with the County and Coakley & Williams. Subcontractor has said they furnished all information requested and do not owe any retro-pay. Jack Gibala conveyed to General that any disputes regarding CCMI's assessments will be addressed at end of project. The matter remained unresolved as of June of 2014. Project closed showing outstanding wages due to employees for all hours worked, misclassified and underpaid. Information included in Project Completion Report provided to County for further action.

Animal Shelter-Subcontractor-JP Construction

Employees report working 6:30-3:30 daily but only paid for 8 hours. JP Construction denies that any work over 8 hours/day. The issue was first raised during June 2013 interviews, but one employee stated has been working these hours since May of 2013. CCMI requested retro-pay for all employees for .5 hour/day from May 2013 through September 2013. CCMI confirmed that workers on all sites for JP Construction work 6:30am-3:15pm M-TH and 6:30am-2:30pm Fridays. CCMI spoke with Augusto and Joe of JP Construction to discuss the retro-pay due to employees. Both deny shorting hours and are using site logs as evidence. Contractor previously had informed CCMI that employees fill our daily logs themselves, but employees say this is not true. CCMI discussed the matter with JP's attorney on this and all the other County

projects where JP has workers in October of 2013. JP responded to CCMI that JP Construction did its own internal investigation and no employees reported shorting of hours worked and requested copies of CCMI interviews showing evidence of the accusations. In February of 2014 Jack Gibala instructed CCMI not to address the matter further with JP, but let the County legal department handle it. The project closed showing outstanding funds due to all employees for .5 hour/week shortages. All of the information was included in Project Completion Report to the County for further action.

Animal Shelter-Subcontractor-Karon Masonry

CCMI received information that all employees use the saw, but are not paid as Sawmen. CCMI sent letters to all employees to confirm trades and hours worked in those trades. Payrolls show that they have Bricklayers, but no Sawmen onsite for duration of job. The project foreman told CCMI there are no dedicated Sawman and all employees use the saw as needed in October of 2013. Owner contacted CCMI to request information on why letters were sent to the employees. CCMI informed owner that CCMI had information that several employees had been misclassified and were underpaid. Employees did not return letters or calls verifying had been misclassified or underpaid. In November, Jack Gibala instructed CCMI to drop the issue since employees would not furnish information for subcontractor to be liable for wages due.

Animal Shelter-Subcontractor -DEH Construction

During an onsite inspection CCMI received information that DEH may be misclassifying workers. CCMI sent letters to all employees to confirm trades and hours worked in those trades. DEH has some unskilled Laborers on payrolls, but most workers are performing Carpentry work. Subcontractor issued retro-pay to all employees due per CCMI spreadsheet on November 2013.

Animal Shelter-Subcontractor -Gryphon Tile

Employees interviewed by CCMI in September of 2013 stated that they were working 6 days/week but not paid any overtime. CCMI requested on the October 2013 audit to the subcontractor for overtime retro-pay to be issued and revisions to certified payroll must reflect correct overtime hours worked. No response received from subcontractor. CCMI sent letters to the employees requesting further clarification. CCMI requested the daily logs from Coakley and Williams in December of 2013. The daily logs show only one Saturday worked, August 24, 2013. In January of 2014, CCMI requested retro-pay for four employees who worked this entire week on the certified payroll but not shown Saturday. Seven of the ten employee letters were returned unopened in February of 2014. The subcontractor issued retro-pay to the four employees who worked Saturday, August 24, 2013 per daily logs in August of 2014.

Judicial Center Annex-Subcontractor-Parkinson

CCMI was contacted by an employee of Parkinson who previously had been assigned to EMOC project. Employee confirmed that a similar misclassification issue was occurring on this site with employees working as Laborer-Mason Tenders, but being classified and paid as Laborers-Unskilled for half a day's work and Bricklayers for the other half of the day. In this way Parkinson was covering themselves for about half of the Mason Tender hours/wages that would be due. CCMI contacted Jack Gibala and it was decided that for the time being CCMI would wait to do further investigations as the EMOC outcome for wages due would set the standard by which other similar projects would have enforcement. Employees continued to contact CCMI, stating that from about third week of March many employees had been let go due

to lack of work. The employees were aware that there was no shortage of work being done by Parkinson. It appears that this subcontractor likely let all employees go who were due restitution for EMOC, so that CCMI could not contact them for similar investigation on this site. DLLR rescinded the original determination for Laborer-Mason Tenders stating that the correct rate should have been published as \$18.05 in July 2013. After this information was released, the investigation was dropped.

Judicial Center Annex-Subcontractor-JP Construction

CCMI received information from employees that confirms same schedule as Animal Shelter/Gaithersburg Library/EMOC 6:30-3:15 Monday-Thursday and 6:30-2:30 Friday =.5 hour overtime due per week. CCMI requested retro-pay for all employees at .5/hour week for overtime wages due. JP Construction stated that the evidence was incorrect and employees did not work any time for which they were unpaid. They later stated that they did their own internal investigation and no employees reported being unpaid for time worked. No retro-pay has been paid. This issue will be included in the Project Completion Report.

Silver Spring Library & MCPS-Food Distribution Relocation-General-Costello Const.

CCMI inspector observed several employees at Silver Spring Library doing Cement Masonry and Carpentry duties, but on the certified payroll records they were being classified as Unskilled Laborers. Due to the number of complaints received for the misclassification, CCMI requested the daily logs for the project. A list of days/employees/ hours in which “Laborers” are performing work other than “Unskilled” was compiled and forwarded to the County as requested. The County met with Costello and Costello denied any wrongful classification of employees or underpayments. It was determined they would submit refuting evidence to the County. They have stated that their individual employee timecards are the accurate records and not the daily site logs filled out by the Superintendent and as such, daily logs cannot be used as verifiable evidence of employee duties. This issue remains open.

*The same misclassification situation is occurring on MCPS-Food Distribution Relocation, except employees are shown on payrolls as Laborer-Concrete Tenders.

Silver Spring Transit Center

Project is currently on hold, waiting for the corrective work that needs to start. There are a few contractors who have outstanding wage violations and appear to be dragging their feet on the corrections. Most other contractors are currently compliant and have corrected any wage violations.

Final Investigation Summary:

While CCMI has outlined the “investigations” conducted or underway, there are scores of deficiencies identified each month through the regular monthly audit process. In most instances contractors and subcontractors are cooperative in correcting these items. Any underpayment of wages and fringe benefits also requires a correction of the certified payrolls, which must be reviewed again by CCMI. CCMI also requires proof of any restitution paid to employees in order to follow up with the contractor or subcontractor to receive and review copies of cancelled checks.

Trends:

The Prevailing Wage/Labor Compliance program has just completed its fifth year. For some contractors, this is still new. Questions frequently arise from contractors and subcontractors. CCMI and LCPTracker staff is easily accessible by telephone and email. While most of the audit work is performed at its west coast office, some CCMI employees are routinely answering telephone calls and emails as early as 8:30 a.m. EST (5:30 a.m. PST). CCMI also maintains staff in Maryland which is available to conduct jobsite interviews, attend preconstruction meetings or available to the County for meetings or consultation upon request.

LCPTracker:

The County requires all contractors and subcontractors on all projects to use LCPTracker to submit certified payrolls and related labor compliance documentation. The use of LCPTracker provides several benefits to the contractor and the County. First, it provides uniformity of forms, data and information by requiring all contractors and subcontractor to use the same forms and data entry system. Secondly, it allows 24-7 access of the records by the County and CCMI. For the contractors and subcontractors, it permits immediate submission of certified payrolls all within the control of the contractor or subcontractor. Once the individual contractor “certifies” the payroll, it is immediately submitted, date stamped, logged and available to CCMI for auditing. This prevents loss of the documentation and complaints that documents were previously submitted and allegedly lost or submitted multiple times.

Finally, the use of LCPTracker is a green solution. This is in stark contrast to the previous system, which required the submission of massive amounts of paper containing certified payrolls, fringe benefit and related information.

However, LCP Tracker is only a tool and it is only as good as the information entered by the contractors. If incorrect information is entered by the contractor, then there is typically a wage violation. Thus, CCMI does not rely merely on the LCPTracker “alert” system, but individually reviews and audits every certified payroll submitted.

While there have been some complaints by subcontractors relating to the LCPTracker system, these have been relatively few, when considering the massive number of subcontractors and documents submitted on the scores of projects using the system since the program was implemented. CCMI found that many of the complaints were the result of a subcontractor’s unwillingness to learn the LCPTracker system. LCPTracker provides online training of their system, as well as interface uploads. Additionally, LCPTracker provides free weekly one-hour webinars that any contractors may attend. The purpose of these sessions is to assist that contractor with questions about the system. While CCMI tries to answer questions relating to a contractor’s use of LCPTracker, most of the complaints were from contractors who or had not bothered to review the online tutorial, attend the webinar or had not called LCPTracker’s technical support line. Most contractors are now comfortable with this system of submitting documentation.

Fringe Benefits:

Contractors who do not contribute to a union trust fund or an approved hours bank program for fringe benefits are required to amortize, or annualize, the value of certain benefits they pay over the course of all hours worked by those employees. As this sometimes requires calculations to be done for each employee to arrive at this fringe benefit number, open shop contractors are frequently confused.

The rules and regulations relating to pension contributions are distinct from those relating to health and welfare, vacation and holiday pay paid by contractors. Many contractors have worked on publicly funded projects for years, without ever having anyone review or audit the projects. Thus, some contractors and subcontractors have unwittingly adopted improper habits, which results in incorrect payments. CCMI acts to correct this situation.

Even some contractors on the federally funded projects are not compliant with Davis-Bacon requirements. Prior to the County's ordinance, these contractors proceeded in the belief that they were in compliance with state or federal prevailing wage law. In reality, even those contractors who have performed federal Davis-Bacon work in the past, have never been audited. As such, the proper implementation of the County law as well as the Davis-Bacon requirements has revealed numerous violations. While many of these are minor, some are substantial and involve substantial sums of money.

Apprentice Issues:

In a few instances, contractors will claim to use an "apprentice" who is not enrolled in a properly approved apprenticeship program. CCMMI verifies that all apprentices are bona fide enrolled apprentices and confirm with the appropriate Apprenticeship committee, the proper level of wages and benefits set forth in the Apprenticeship Standards and approved by the Maryland DLLR and the US DOL. The Montgomery County ordinance requires that apprentices be an approved apprentice through the State of Maryland's apprentice program. (All apprenticeship programs approved by the State of Maryland are also approved by the Bureau of Apprenticeship Standards with the U.S. Department of Labor.

Wage Violations:

The typical wage violation from contractors and subcontractors stems from the use of an improper wage rate, either the contractor's regular rate of pay or a "prevailing rate" used on a prior project. In some cases the underpayment is due to the improper calculation of fringe benefits. CCMI has observed the most blatant wage violations relate to a misclassification of workers into a lower paid classification or the intentional underreporting of hours and overtime.

Liquidated Damages:

There are a number of contractors who remain convinced that if they correct wage errors or eventually submit the late payroll, that all liquidated damage will disappear. CCMI has been clear at the preconstruction conference and throughout the project in advising the contractor that the County is within its right to assess liquidated damages for these violations and the penalties will not automatically disappear if the items are ultimately, albeit late, corrected.

Observations:

Contractors who are working on their second or third project with the County seem to now understand the proper requirements set forth by the County (Davis-Bacon Act for the federally funded projects).

With the increase of construction work during this heightened building season, some subcontractors (who are not familiar with the County's labor compliance program) are attempting to "cut corners" by underpaying employees through a variety of methods. While this is not a majority of the contractors, the investigation and enforcement of the prevailing wage requirements with these contractors does take an inordinate amount of time when compared to other auditing requirements. A typical error or mere deficiency typically takes a minimum of 3 months or more to resolve (1 month of work occurs before the payrolls are reviewed and the issue identified and provided to the contractor; 1 month for the subcontractor to correct the error and provide the correction and documentation to CCMI; 1 month to receive proof of restitution.) When contractors object or do not understand the basis for the deficiency or underpayment, it takes additional time to work with the contractor and subcontractor to resolve the issue.

The typical investigation can take 6 months or more. This is because a contractor in this instance may be falsifying records and therefore is reluctant to provide back-up documentation. It may take two or three requests before the documentation is provided. When documentation is produced, it is not for a single month of work, but for the entire project and frequently for all employees. This involves a massive amount of time to review and essentially re-audit the project, comparing weekly time cards with payroll records and then to the certified payroll submitted. When employees are contacted by CCMI, it can take several weeks before they respond. This is typically followed up with additional phone calls and a review of documentation sent by the employees. It is necessary that this process be thorough and complete. First, CCMI does not want to accuse a contractor of a violation without sufficient proof (disgruntled employees have been known to report a violation when none existed). Secondly, the information CCMI ultimately provides to the County regarding a violation for which penalties will be assessed must be thoroughly substantiated, should the contractor appeal the decision of the Director to order the payment of corrected wages and the imposition of liquidated damages.

The need to enforce prevailing wages evenly and fairly is necessary to ensure the worker is fairly compensated, and because it maintains an even playing field for contractors when bidding work. If all are required to comply with the prevailing wage laws, then no single contractor or subcontractor is receiving an unfair advantage in the bidding process by undercutting wages.

Detailed Project/Status Information:

The best indicator of the status of any project is a review of the monthly audit CCMI provides to the prime contractor, along with a copy to the County. CCMI provides a separate audit for each subcontractor audited on the project. As the prime contractor is ultimately responsible for the payment of prevailing wages on the project and with whom the County has privity of contract, the contractor has the responsibility to ensure that all subcontractors are in

compliance and correct any deficiency. Breaking the reports down by subcontractor provides greater efficiency for the prime contractor in getting this information to each subcontractor, without having to engage in a time consuming extraction of information about subcontractors from one single report. Typically, a prime contractor can take the report for each subcontractor and deliver this to that subcontractor by email or facsimile in a matter of minutes.

The audit identifies the payrolls reviewed, documents missing or completed incorrectly, any deficiency in wages, misclassification or underreporting of hours. If there are issues relating to fringe benefits, amortization or apprentices, these items are also noted. Additionally, each subcontractor is provided with a running total of potential liquidated damages which may be imposed for the late submission of payrolls.

Conclusion:

Since the County has completed several years of the program and several dozen projects, now would be the time to make adjustment and fine tune the program ordinances and regulations with mechanisms to allow for more prompt closing of projects, resolution of issues resulting from the imposition of liquidated damages, etc. CCMI's commitment is to "get it right" in whatever format and context the County ultimately decides. CCMI is committed to assist the County as it implements this important program.