



Department of Legislative Services  
Office of Legislative Audits

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# Maryland Department of Transportation Maryland Transit Administration

Allegations Related to Possible Violations of  
State Laws, Regulations, and Policies  
Involving an MTA Management Employee

Special Review

Report dated January 7, 2019

Presentation to the Joint Audit Committee

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### Overview

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- We conducted a review of allegations received through our fraud, waste, and abuse hotline regarding possible violations of State laws, regulations, and policies by an MTA Light Rail Operations management employee.
  - The management employee directed a prime contractor to use specific vendors as subcontractors, including one vendor with which the management employee had less than an arm's-length relationship (hereinafter referred to as the "related vendor").
  - All of the contracts were competitively procured by MTA's Procurement Department based on the specifications and deliverables established by the respective departments. The respective departments were delegated responsibility for administering the contracts, assigning and monitoring the work, and approving the related invoices.
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### Overview

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- The scope of our review included 3 five-year ancillary service contracts collectively valued at \$36 million that were each awarded to the prime contractor identified in our allegation, including two contracts in which work totaling \$3 million was subcontracted to the related vendor. We also identified and reviewed 4 snow and ice removal contracts, collectively valued at \$6.2 million, that involved the related vendor as either the prime contractor or a subcontractor.
  - We identified certain questionable matters as described in the findings which we referred to the Office of the Attorney General – Criminal Division. We also identified possible violations of State ethics law that may require referral to the State Ethics Commission. Finally, we noted violations of State procurement regulations and MTA policy, as well as poor contract administration procedures and controls.
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### Key Issues

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- Language in certain contracts allowed employees to circumvent State procurement regulations. The management employee used this capability to direct work to the related vendor.
  - Competition may have been limited on two contracts, and another contract was awarded to contractors that did not appear to meet the technical qualifications.
  - Task orders were improperly issued for projects that should have been procured separately; critical task order and bid documents were not retained; required approvals were not obtained, and task order payments were not monitored.
  - The management employee directed and monitored 4 snow and ice removal contracts involving the related vendor, raising questions about the integrity of the award and related payments.
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## Ancillary Service Contracts (Finding 1)

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### Contract Language Allowed MTA to Circumvent State Procurement Regulations

- Contract language allowed MTA employees to direct prime contractors to use certain vendors as subcontractors, circumventing State procurement regulations. Prime contractors could charge higher overhead rates for using the vendors selected by MTA employees.

### MTA Management Employee Had a Relationship with a Vendor

- The management employee directed prime contractors on two \$9 million contracts to subcontract work to a vendor. Two employees of the vendor were close relatives of the management employee. Two other employees of the vendor resided at properties owned by the management employee. The vendor's Chief Financial Officer operated a business out of a property owned by the management employee.
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## Ancillary Service Contracts (Finding 1 cont.)

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### Questionable Payments

- The related vendor was paid \$192,000 to perform snow removal and train cleaning services that should have been provided under other existing contracts. The rates paid to perform these services exceeded the rates on the existing contracts.
- Certain tasks performed by the related vendor did not appear to be appropriate under the contracts. For example, one \$15,420 invoice for multiple services included charges for driving a light rail operations employee to a hardware store to purchase cleaning supplies.

These questionable payments, coupled with the relationships we described previously, raise questions about a possible conflict of interest between the management employee and the related vendor.



## Ancillary Service Contracts (Finding 2)

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- MTA may have limited competition on the light rail ancillary service contracts by combining specialized maintenance and repair of light rail tracks with maintenance and repairs at MTA facilities. Our review disclosed that the majority of work performed under the contract was related to maintenance of MTA facilities (such as painting, electrical, plumbing, and HVAC).
  - The method used to award the two light rail contracts provided no assurance that the State received the most advantageous pricing and may have enabled the management employee to direct work to the related vendor.
  - Two of the three prime contractors awarded a security and wireless ancillary contract did not demonstrate that they met the contract's technical experience and qualification requirements. MTA used this contract to subcontract work to two incumbent vendors whose contracts had expired.
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## **Ancillary Service Contracts (Finding 3)**

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MTA did not properly administer task orders issued under the three ancillary contracts and did not monitor the related payments.

- MTA improperly issued task orders for projects that exceeded \$500,000 which, according to MTA policy, should have been competitively procured as separate contracts. The management employee controlled three such task orders totaling \$5.8 million.
  - MTA did not retain copies of task orders and critical bid documents, and did not obtain required approvals. For example, 8 task orders totaling \$8.5 million (of 12 tested) were not approved by MTA's Task Order Review Committee.
  - MTA did not properly monitor the amounts paid under the task orders and obtain support for the related invoices. For example, MTA did not ensure documentation was provided by the contractors to support subcontractor charges.
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## Snow and Ice Removal Contracts (Finding 4)

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The management employee directed and monitored four light rail snow and ice removal contracts that involved the related vendor.

- The related vendor and a second vendor bid on each contract and listed each other as subcontractors in their respective bid submissions. Of the \$3.6 million paid under these contracts, \$1.5 million was paid to the related vendor as a prime contractor or a subcontractor.
- The management employee was responsible for authorizing the number of hours the vendor could work (including overtime). Therefore, the vendors could have potentially submitted low hourly rates to win the contract awards, with the knowledge that the amount ultimately paid would be dictated by the hours the management employee later authorized.



## Conclusion

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MTA should

- discontinue using contract language that permits circumvention of State procurement regulations and directing contractors to use specific vendors;
  - take appropriate action regarding the MTA employee's involvement with the contracts;
  - after consultation with the Office of the Attorney General – Criminal Division, refer this matter to the State Ethics Commission;
  - ensure future contracts maximize competition, provide the State with the most advantageous pricing, and are only awarded to vendors who meet the qualifications;
  - administer task orders in accordance with MTA policies and retain critical documents;
  - obtain and review support for invoice charges; and
  - verify the propriety of the procurement of and invoices submitted under the four snow and ice removal contracts.
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