



**Department of Legislative Services
Office of Legislative Audits**

**Maryland Department of Transportation
Maryland Transit Administration
(MTA)**

Combined Presentation On

Fiscal Compliance Audit
Report Dated November 20, 2018

and

Special Review
Allegations Regarding Potential Violations of Laws
Report Dated January 7, 2019



Department of Legislative Services Office of Legislative Audits

Fiscal Compliance Audit Overview

Our fiscal compliance (FC) report contained 11 findings, including 2 repeat findings from the preceding FC audit report and 2 repeat findings from our February 3, 2015 special report on MTA's Interagency Agreements with a State University.

Key findings:

- MTA used contracts to obtain certain services that were outside their scope, thereby circumventing competitive procurement requirements and incurring unnecessary administrative fees.
 - Additional contract procurement and monitoring deficiencies and questionable activities were identified in a January 7, 2019 special report, also included in this presentation, beginning on page 11.
 - MTA did not always adhere to State procurement regulations regarding sole source procurements, contract award requirements, and bid documentation, and certain monitoring efforts were inadequate.
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Fiscal Compliance Audit Overview (cont.)

Key findings (cont.):

- MTA used interagency agreements (IAA) with institutions of higher education to procure unrelated services, circumventing competitive bidding requirements and incurring excessive administrative fees.
 - MTA did not recover IAA overpayments; did not adequately monitor work performed under these agreements; and certain payments were made for work that was not authorized or supported.
 - Employees had improper access to both initiate and approve purchase orders or disbursements, and certain employees had access capabilities granting them complete control over payroll and pension transactions.
 - Sufficient controls were not in place over Mobility Paratransit Program eligibility determinations, MTA's computers were not sufficiently protected, and internal control deficiencies existed over certain cash receipts and equipment.
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Procurement & Monitoring (FC Finding 1)

Labor Negotiation Consulting Services

- MTA used a management services contract to obtain \$257,000 in labor negotiation services that were unrelated to the contract's scope, including \$14,000 in unnecessary management fees.
- The related task order lacked specific deliverables; the hourly service rate increased 31 percent from the preceding contract for these services; and the service provider's resume did not reference any experience in labor negotiations.

Employment of Support Staff

- MTA improperly used two task orders under architectural and engineering contracts to direct subcontractors to hire an individual to perform unrelated general accounting services.
 - The two task orders' payments totaled \$319,000 from August 2014 through May 2017, including \$129,000 for direct services and \$190,000 for subcontractor payments. During this period, the individual's hourly rate increased 30 percent.
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Procurement & Monitoring (FC Finding 2)

MTA did not always adhere to certain State procurement regulations (**Repeat**).

- Our test of 23 sole source procurements found that MTA lacked sufficient evidence to support that, for 10 purchases totaling \$2 million, no other vendors could supply the items purchased.
 - For a \$36.8 million contract to overhaul its rail commuter fleet, MTA had no record that bids were received on time and of the bid opening process. Technical evaluations were not individually signed.
 - Corporate purchasing cards were repeatedly used to procure bus repair services and parts from two vendors without competitive bids and written contracts. MTA made 1,550 payments to these two vendors totaling \$1.4 million for a 3-year period.
 - For a \$6.1 million light rail vehicles (LRV) cleaning contract, MTA did not require the contractor to submit documentation of actual services provided, but paid the contractor a fixed monthly fee regardless of the number of hours worked, staffing levels provided, or the number of LRVs cleaned.
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Interagency Agreements (FC Finding 4)

MTA used interagency agreements (IAAs) with higher education institutions, primarily to circumvent State procurement regulations **(Repeat)**.

- MTA used IAAs with two higher education institutions, which were to provide training courses and related services, to circumvent competitive bidding requirements. MTA directed the institutions to contract with a vendor to provide services that were outside the scope of the agreements. Competitive bids were not obtained.
 - The institutions also had minimal involvement in the work performed by the vendor.
 - The administrative fees charged by the institutions appeared excessive. MTA paid \$1.8 million for these vendor services during the period from fiscal years 2012 to 2017, including \$529,000 to the institutions as administrative fees (rates ranging between 25% and 51%).
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Interagency Agreements (FC Findings 5 & 6)

Identified Overpayments Not Recovered (Finding 5)

- In response to a preceding OLA audit, MTA reviewed \$10.7 million in interagency agreement (IAA) payments to a State university, but did not follow up on the results of its own review.
- MTA's review disclosed \$725,000 in duplicate payments and overpayments, including \$416,000 in administrative fees. MTA also could not verify receipt of deliverables for \$6.5 million in billings. In consultation with legal counsel, MTA advised it would not pursue recovery of these funds.

IAs Not Adequately Monitored (Finding 6)

- Our review of 9 task orders under three IAs disclosed that 4 task orders valued at \$755,000 lacked a description of the work to be performed, which precluded effective monitoring.
 - Our review of 12 payments under these task orders disclosed \$53,000 in payments for work that was not authorized or adequately supported (**Repeat**).
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Other FC Findings

Finding 3 – Purchasing and Disbursements

Proper controls were not established over the processing of purchasing and disbursement transactions (**Repeat**). Five employees had system access to both initiate and approve purchase orders, and one employee could both initiate and approve disbursements. These transactions were not manually reviewed.

Finding 7 – Mobility Paratransit Program (MPP)

Controls were not in place to ensure that MPP eligibility determinations were proper and that ID cards were only issued to eligible individuals. Fiscal year 2017 MPP payments were \$76 million.

Finding 8 – Union Payroll and Pensions

Six payroll employees had access capabilities granting them virtually complete control over union payroll and pension transactions. Calendar year 2017 union payroll and pension payments were \$216.8 million.



Other FC Findings (cont.)

Finding 9 – Cash Receipts

Certain collections were not adequately controlled. For example, Consignment Center and Transit Store collections were not adequately verified from initial receipt to deposit. These collections totaled \$13.3 million during fiscal year 2016.

Finding 10 – Equipment

MTA did not ensure that all equipment purchases were recorded in its detailed equipment records. Our test of 40 items found 27 were not recorded.

Finding 11 – Information Systems Security & Control

Malware protection was not sufficient to provide MTA with adequate assurance its computers were properly protected. For example, our test of 10 MTA workstations and 2 servers disclosed that 2 workstations had no malware protection software installed, and the remaining 8 workstations and 2 servers had outdated versions.



Fiscal Compliance Audit Conclusions

MTA should

- discontinue the practice of using existing contracts and interagency agreements to circumvent competitive procurement requirements;
 - ensure task orders specify required deliverables that can be used for monitoring services provided and payments made;
 - comply with State procurement regulations regarding sole source procurements, maintain adequate bid documentation, consolidate procurements of similar goods to maximize buying power, and monitor contractual services provided;
 - ensure that appropriate controls are established and followed over purchases and disbursements, the MPP eligibility process, union payroll and pension transactions, collections, and equipment inventory; and
 - ensure that all computers have proper malware protection software and are up-to-date for critical security-related updates.
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Special Review Overview

- We conducted a special review (SR) 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.
 - In our report dated January 7, 2019, we noted that this employee directed a prime contractor to use specific vendors as subcontractors, including one vendor with which the employee had less than an arm's-length relationship (hereinafter referred to as the "related vendor").
 - 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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Special Review Overview (cont.)

Key findings:

- 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 Contracts (SR Finding 1)

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 Contracts (SR Finding 1 cont.)

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 Contracts (SR Finding 2)

- 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 Contracts (SR Finding 3)

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 Removal Contracts (SR Finding 4)

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.



Special Review Conclusions

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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