



Department of Legislative Services
Office of Legislative Audits

Judiciary

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Presentation to Joint Audit and Evaluation Committee

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Background

- The Judiciary is responsible for the administration of justice in Maryland. The Judiciary includes the courts and various other agencies that support the administrative and regulatory functions of the Judicial Branch of government.
 - During fiscal year 2019, the Judiciary's operating expenditures (including the district and circuit courts) totaled \$566.7 million and revenues totaled \$52.5 million.
 - The audit report covers activity during the period from December 21, 2015 through June 9, 2019. The report contains seven findings, including two repeat findings from our preceding audit report.
 - The Judiciary's response indicated disagreement with the factual accuracy of the report findings, but in many cases agreed to implement the related recommendations. In our opinion, many of the expressed disagreements stemmed from the Judiciary's position as an independent and equal branch of State government. Nevertheless, we believe that does not mitigate the need to establish, and follow, appropriate controls to safeguard State assets under the Judiciary's authority and care.
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Key Findings

- The Judiciary did not adequately secure and/or retain critical procurement documents, and did not publish certain contracts on *eMaryland Marketplace* (eMM) as required by its policies.
 - The Judiciary did not consider the use of available Statewide contracts for its credit card processing and could not justify its long term use of sole source procurements for these services, which we concluded resulted in reduced competition and increased costs for consumers.
 - The Judiciary did not maintain accurate and comprehensive records for its information systems cable and wiring master contract, and did not properly award task orders and change orders, certain of which appeared questionable. Further, the Judiciary did not take all appropriate recommended corrective actions to address allegations it received about the contract.
 - The Judiciary did not have sufficient procedures and controls over eligibility determinations for legal representation provided by the Office of the Public Defender.
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Procurements

Background:

The Judiciary, as an independent branch of the State Government, is not subject to the State Finance and Procurement Article of the Annotated Code of Maryland and State procurement regulations. The Judiciary established a *Procurement Policy* under the authority of the Chief Judge of the Court of Appeals in accordance with the Maryland Constitution. During fiscal year 2019, the Judiciary's non-payroll operating expenditures totaled approximately \$179.5 million. During our audit, we selected for testing:

- ten contracts procured during our audit period totaling approximately \$36.4 million (including contract modifications totaling \$5.8 million),
- one \$2.5 million cable and wiring master contract, that was the subject of an allegation received through our fraud, waste, and abuse hotline, and
- one longstanding contract for credit card processing with the same vendor.



Procurements (Finding 1) Repeat Finding

The Judiciary did not adequately secure and/or retain critical procurement documents and did not publish certain contracts on *eMaryland Marketplace* (eMM) as required. Our review disclosed the following conditions:

- Bids were not properly secured prior to opening.
- Losing bidders' financial and technical proposals or selection committee evaluations for three of the eight competitively bid contracts tested totaling approximately \$7.3 million were not retained (Repeat Finding).
- The Judiciary did not document that a \$2 million Intergovernmental Cooperative Purchasing Agreement for office furniture was originally competitively procured and that it resulted in favorable pricing and conditions.
- The Judiciary did not publish contract solicitation and/or awards on eMM for eight contracts totaling \$34.6 million as required by its policy.



Procurements (Finding 2)

The Judiciary did not consider the use of available Statewide contracts to obtain credit card processing services and could not justify the use of a sole source procurement for these services or the basis for the related fees.

- The Judiciary has continually obtained credit card payment services for online and in-person district court transactions since at least 1989 using a sole source procurement even though there was an existing Statewide contract for similar services at lower costs to consumers. Our analysis estimated consumers would have saved \$2.7 million during the period from December 2015 to June 2019 under the Statewide contract.
- The Judiciary also did not adequately justify the use of the sole source procurement for these services, could not document how it had negotiated the fee with this vendor, and continued to use the vendor for at least 18 months after the most recent contract expired.

The Judiciary is not required to use statewide contracts, but its Procurement Policy allows for the use of Statewide contracts to achieve competitive prices, terms, and conditions.



Questionable Procurement Activity (Findings 3 and 4)

Background:

- We received an allegation through our fraud, waste, and abuse hotline regarding questionable contract activities involving certain Judiciary employees and a vendor performing work under the Judiciary's information systems cable and wiring master contract. The Judiciary received a similar allegation and its Internal Affairs Division, in conjunction with its Internal Audit Department, conducted a review of the allegations. As of June 9, 2019, payments under the contract totaled approximately \$3.2 million, including \$2.3 million that was paid to the vendor referenced in the allegation.
- We reviewed the files supporting the results of the Judiciary's internal review and conducted our own review of the contract. We noted that the Judiciary did not address certain recommendations included in its review and we identified additional internal control and monitoring deficiencies and certain questionable activity, which we referred to the Office of the Attorney General – Criminal Division. A referral to the Criminal Division does not mean that a criminal act has actually occurred or that criminal charges will be filed.



Questionable Procurement Activity (Finding 3)

As of June 9, 2019, the Judiciary awarded the vendor in the allegation 123 of the 193 task orders issued under the master contract, accounting for \$2.4 million of the \$3.3 million awarded (73 percent). We judgmentally selected six task orders and related change orders totaling \$802,574 for testing, which were awarded to the vendor identified in the allegation (see figure below).

Test Item	Courthouse Location for Task Order	Task Order Amount	Number of Bidders	Amount of Change Orders	Number and Percentage Increase of Change Orders		Final Task Order Amount
1	Worcester	\$224,579	1	\$25,455	2	11.3%	\$250,034
2	Harford	149,931	1	12,107	2	8.1%	162,038
3	Allegany	90,674	1	31,188	2	34.4 %	121,862
4	Howard	89,992	1	30,618	2	34.0%	120,610
5	Washington	62,710	2	11,259	3	18.0%	73,969
6	Anne Arundel	41,740	1	32,321	2	77.4%	74,061
Total		\$659,626		\$142,948	13		\$802,574

Source: Judiciary records



Questionable Procurement Activity (Finding 3)

Our review of the task orders and related change orders disclosed the following:

- Accurate and comprehensive records of project awards and costs were not maintained. As a result, the Judiciary overspent the contract by at least \$664,000 and overcommitted task orders by \$769,000.
 - For two task orders totaling \$324,000, bids were received 5 and 16 calendar days after the due dates specified in the solicitation.
 - For two task orders totaling \$194,700, the Judiciary did not notify all contract vendors of changes made to the scope of the work after the initial bids were received, but prior to awarding the task order.
 - The Judiciary could not document that it had assessed the reasonableness of 11 of the 13 change orders totaling \$130,800. The allegation noted that the vendor submitted low bids to receive the award and then submitted change orders to compensate for the initial low bids.
 - Three change orders totaling \$72,100 included labor costs that should not have been charged per the task order or were submitted by the vendor after the related work was already in progress or completed.
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Questionable Procurement Activity (Finding 4)

- The Judiciary did not take sufficient corrective action to address allegations it received about its cable and wiring master contract. At the time of our review, three of the six recommendations included in an internal audit report had not been implemented. Specifically, the Judiciary had not established:
 - (a) dollar thresholds for obtaining approvals on projects,
 - (b) comprehensive procedures for recording change orders, and
 - (c) procedures for authorizing work to start.

- The Judiciary disagreed with our finding and recommendations since it believed it had adjusted processes as appropriate to address the recommendations contained in the internal audit report. However, the Judiciary could not provide documentation or otherwise sufficiently demonstrate that it had taken action until after we brought this matter to its attention.



Public Defender Eligibility Determinations (Finding 6)

- State law transferred responsibility for determining eligibility for most Office of Public Defender (OPD) services to the Judiciary effective October 1, 2017. As of June 2019, the Judiciary made 191,000 eligibility determinations since it assumed responsibility. Our review disclosed the following conditions:
 - The Judiciary did not develop a formal policy and definitions for determining the applicant's household or family size as required by federal regulations and did not obtain documentation to verify the household or family size claimed by the applicant.
 - Applicant information entered into the eligibility database was not reviewed, at least on a test basis, to ensure the accuracy of the data entry.
 - The Judiciary disagreed with portions of the finding and related recommendations based on its understanding of the controlling State statute, and that its staff were judicial officers (implying that they were not accustomed to or qualified to perform data verification). We believe the Judiciary should ensure applicant information and related eligibility determination are accurately recorded and performed, at least on a test basis.
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Other Findings

Traffic Citations

- **Finding 5** - Certain employees within the Judiciary's Traffic Processing Center (TPC) with access to the Maryland Automated Traffic System (MATS) had the capability to delete recorded citation transactions without independent approval or record of the transaction (that is, a record of its deletion would not be known). Additionally, access to MATS and the Maryland Electronic Courts (MDEC) system was not periodically monitored to ensure access was properly restricted. We noted that 13 of 27 TPC employees had access to MDEC that was not needed to perform their job duties.

Equipment

- **Finding 7 (Repeat Finding)** - The Judiciary did not establish effective controls over equipment. Specifically, eight employees with access to inventory had the capability to update the related equipment records. In addition, physical inventories for the District Court were not conducted as required for 319 equipment items totaling \$600,000.



Conclusions

The Judiciary should implement the following:

- secure and retain critical procurement documents and publish contract solicitations and awards;
- consider using available Statewide contracts when advantageous;
- enhance procedures over task order processing and ensure total costs expended do not exceed the value of related contract without documented justification;
- address the unresolved recommendations of its internal report on alleged questionable contract practices;
- ensure, at least on a test basis, the accuracy of eligibility determinations for legal representation by OPD; and,
- establish effective controls over the processing of traffic citations and equipment.