

Special Review

**Maryland Department of Transportation
Maryland Port Administration**

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

June 2019



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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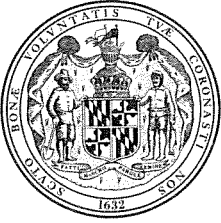
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Gregory A. Hook, CPA
Legislative Auditor

June 26, 2019

Senator Craig J. Zucker, Senate Chair, Joint Audit Committee
Delegate Shelly L. Hettleman, House Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We conducted a review of an allegation received through our fraud, waste, and abuse hotline regarding the Maryland Department of Transportation (MDOT) – Maryland Port Administration (MPA). The allegation related to possible violations of State laws, regulations, and policies involving an MPA contract administrator directing a property management contractor to use specific vendors as subcontractors under a multi-million dollar property management contract, as well as questionable corporate purchasing card activity involving the same employee. Our review did not identify any issues that warranted referral to the Office of the Attorney General – Criminal Division, but we did find that MPA used its property management contract to procure services in a manner that was not consistent with State procurement regulations. Our review also identified poor contract administration procedures and controls that require corrective action by MPA.

Specifically, our review disclosed that MPA could not provide documentation that subcontracted work valued at \$830,000 was competitively procured by the property management contractor in accordance with the contract. In addition, the employee referenced in the allegation directly contacted and obtained proposals from certain vendors and referred them to the contractor to use as subcontractors. We were advised by the MPA contract administrator that three vendors, including an out-of-state painting company, were brought in to work as subcontractors because of the administrator's familiarity with their work through a previous working relationship in the private sector. During the period from September 2016 through December 2018, the contractor made 20 payments totaling \$154,000 to these three vendors.

We further noted that MPA did not have formal procedures to independently review and approve construction and maintenance projects assigned to the property management contractor. MPA also did not always approve project cost estimates prior to the start of work on projects and did not approve certain change orders. For example, MPA did not formally approve an additional \$100,000 for construction, moving, mold remediation, and electrical work performed by four subcontractors on a carpet replacement project approved for another subcontractor at a cost of \$25,000. Finally, MPA did not have subcontractor invoices to support certain amounts billed on the contractor invoices.

MDOT's response, on behalf of MPA, to this review is included as an appendix to this report. We reviewed the response to our findings and related recommendations, and have concluded that the corrective actions identified are sufficient to address all issues.

We wish to acknowledge the cooperation extended to us during the review by MPA. We also wish to acknowledge MDOT's and MPA's willingness to address the issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA
Legislative Auditor

Scope, Objectives, and Methodology

We conducted a review of an allegation received through our fraud, waste, and abuse hotline regarding the Maryland Department of Transportation (MDOT) – Maryland Port Administration (MPA). The allegation related to possible violations of State laws, regulations, and policies involving an MPA employee directing a property management contractor to use specific vendors as subcontractors, as well as questionable corporate purchasing card (CPC) activity involving this same employee. The purpose of our review was to determine whether the allegation we received was valid and the extent to which the related activities violated State laws, regulations, and policies. This review was performed in accordance with State Government Article, Section 2-1220 of the Annotated Code of Maryland.

The scope of our review included a multi-million dollar property management contract awarded to the contractor identified in the allegation, which covered a period of more than 10 years, ending in June 2019. The property management contract provided for the contractor to manage building operations, maintenance, and construction-related services at one of MPA's facilities. Since the allegation related to the use of subcontractors for construction-related services, we limited our review to the construction-related projects completed by the contractor. We also reviewed CPC activity involving this MPA employee and selected employees in other MPA departments.

Our review consisted of tests, analyses, observations, and discussions with MPA personnel and others, as we deemed necessary, to achieve our objectives.

The results of our review of the allegation did not identify any issues that warranted a referral to the Office of the Attorney General – Criminal Division, but we did find that MPA used its property management contract to procure services in a manner that was not consistent with State procurement regulations. The results of our review of the allegation are identified in Finding 1. Our review also identified issues with the administration of the property management contract and monitoring of the related payments, which are identified in Findings 1 and 2, certain of which involved the MPA employee. Another less significant finding was communicated to MPA that did not warrant inclusion in this report.

Our review did not constitute an audit conducted in accordance with generally accepted government auditing standards. Our review was conducted during the period from November 2018 through March 2019.

The response from MDOT, on behalf of MPA, to our findings and recommendations is included as an appendix to this report. As prescribed in State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise MDOT regarding the results of our review of its response.

Background Information

Agency Responsibilities

The Maryland Port Administration (MPA), a transportation business unit of the Maryland Department of Transportation, operates State-owned port facilities and promotes the economic well-being of Maryland's ports. MPA is responsible for managing the State's investment in port facilities; developing trade by promoting maritime business; and coordinating the delivery of services, such as dredging and navigational aids, to the maritime community. MPA also owns and operates a number of facilities including Baltimore's World Trade Center building. According to State records, during fiscal year 2018, MPA's operating and capital expenditures totaled approximately \$140.1 million.

Overview

The hotline allegation pertained to an MPA employee directing a property management contractor to use specific vendors as subcontractors, as well as questionable corporate purchasing card (CPC) activity involving this same employee. The contract identified in the allegation was for management of building operations, maintenance, and construction-related services at one of MPA's facilities and had a total value exceeding \$40 million. According to MPA's records, as of January 2019, payments to the contractor totaled \$36.4 million since the contract's inception.

The property management contract was competitively procured more than 10 years ago by MPA's Office of Procurement based on the specifications and deliverables established by the relevant MPA department. The MPA employee referenced in the allegation started working for MPA several years after the contract had been procured, replacing the prior contract administrator. As contract administrator, this employee was responsible for assigning building renovation and improvement projects to the contractor, monitoring the overall work, and approving related invoices.

The contractor generally used subcontractors to complete construction projects, such as tenant renovations and other building improvements, at the request of

MPA. The property management contract provided that the contractor was responsible for soliciting bids and awarding the work to subcontractors, directing and monitoring the work completed by subcontractors, and paying the subcontractors' invoices. The subcontractors' charges were to be incorporated into the contractor's invoices submitted to MPA, along with a fixed overhead fee.

We reviewed 13 construction-related projects performed under the property management contract, with related expenditures totaling approximately \$2.1 million as of December 2018, including 7 projects for which the vendors referenced in the allegation were subcontractors. We also reviewed CPC transactions totaling \$54,500, involving the MPA employee referenced in the allegation and employees in other MPA departments, and we did not identify any reportable conditions.

Based on our review, we substantiated certain aspects of the allegation. Specifically, MPA used its property management contract to procure services in a manner that was not consistent with State procurement regulations. Our review also identified poor contract administration procedures and controls that require corrective action by MPA.

Findings and Recommendations

Contract Procurement

Finding 1

MPA did not ensure certain construction-related services were competitively procured in accordance with the terms of the property management contract. In addition, the MPA contract administrator made direct contact with and obtained proposals from certain vendors and referred them to the contractor to use as subcontractors.

Analysis

MPA did not ensure certain construction-related services were competitively procured in accordance with the terms of the property management contract. In addition, the MPA contract administrator made direct contact with and obtained proposals from certain vendors and referred them to the contractor to use as subcontractors.

- MPA did not ensure the property management contractor competitively procured its subcontracted work as required. The property management

contract generally required the contractor to competitively procure any subcontracted projects valued at more than \$2,500, and to submit all related bid documentation to MPA for approval. Our test of 13 projects, for which expenditures totaled approximately \$2.1 million during the period from May 2015 through December 2018, disclosed that MPA could not provide documentation that subcontracted work, totaling \$830,000, was competitively procured for 12 of the projects.

Although the MPA contract administrator informed us that the contractor generally submitted bid documentation for review and approval, the contract administrator could not provide us with bid documentation for these projects. We contacted the contractor to obtain support for these 12 projects. For 6 of the projects tested with related payments totaling \$391,000, the contractor advised us that no bids were obtained for the subcontracted work totaling \$373,000. For the remaining projects, the contractor could not provide the requested documentation to support that all of the subcontracted work had been competitively procured.

- MPA used its property management contract to procure services in a manner that was not consistent with State procurement regulations. Our review of MPA records disclosed that the MPA contract administrator made direct contact with and obtained proposals from vendors and then submitted them to the contractor to use as subcontractors. One of these subcontractors was an out-of-state painting company that was paid \$46,500 by the contractor as of January 2019. When we discussed this with the MPA contract administrator, we were advised that three vendors, including the painting company, were brought in to work as subcontractors because of the administrator's familiarity with their work through a previous working relationship in the private sector.

Our test of the 13 projects disclosed that these 3 vendors with which the MPA contract administrator had a previous working relationship were used as subcontractors on 7 of the projects. These 7 projects were among the aforementioned 12 projects for which neither MPA nor the contractor could provide documentation that the work was competitively procured. Based on our review of the contractor's records, during the period from September 2016 through December 2018, the contractor made 20 payments totaling \$154,000 to these 3 vendors.

- The current and prior MPA contract administrators initiated projects with the contractor without any formal independent review and approval. This is significant because both the current and prior MPA contract administrator also

approved the related contractor invoices for all the projects tested, which resulted in a lack of segregation of duties.

Recommendation 1

We recommend that MPA

- a. ensure the contractor competitively procures subcontractor services in accordance with the contract,**
- b. discontinue the practice of directing contractors to use specific vendors as subcontractors, and**
- c. ensure that duties are properly segregated by establishing procedures for a formal independent review and approval of projects with the contractor.**

Contract Monitoring

Finding 2

MPA did not always approve project cost estimates prior to the start of work and did not approve certain change orders. In addition, MPA did not have required support for certain contractor invoices tested.

Analysis

MPA did not always approve project cost estimates prior to the start of work on the projects. In addition, MPA did not always approve project change orders and did not have subcontractor invoices to support certain related contractor invoices. Our test of 13 projects with expenditures totaling approximately \$2.1 million during the period from May 2015 through December 2018 disclosed the following conditions:

- MPA did not always obtain and approve project cost estimates prior to the start of work on the projects. When responding to MPA requests for services, the property management contract required the contractor to submit project cost estimates, for MPA's approval, that established fixed prices for completing projects, including the overhead charges in accordance with the contract. Our test disclosed that, for 8 projects with expenditures totaling approximately \$1.9 million, MPA did not approve the project cost estimates until up to 374 days after the subcontractors had already billed the contractor for work performed costing \$219,000. Allowing subcontractors to start work prior to approval of the related cost estimates precluded effective project oversight, especially since the contractor's overhead payments were a percentage of the related subcontractor charges.

- MPA did not always formally approve changes to the scope of a project and the associated cost. We were advised by the contract administrator that changes to the scope of a project should be supported by approved change orders documenting the necessity of the additional work. However, our test disclosed that MPA could not provide documentation that it had approved additional work and the related costs beyond the original estimates, totaling \$209,000, that were associated with seven projects originally valued at \$1.3 million. As a result, there was no assurance that the additional work and related costs were reasonable.

For example, a previous contract administrator approved an estimate totaling \$25,000 for carpet replacement to be performed by a subcontractor. MPA ultimately paid the contractor an additional \$100,000 for construction, moving, mold remediation, and electrical work performed by four other subcontractors, but did not formally approve these scope changes.

- MPA did not always obtain required support for subcontractor work to substantiate the propriety of the amounts invoiced by the contractor. The property management contract required the contractor to provide subcontractor invoices along with its own invoices when submitting to MPA for payment. However, for three of the projects tested totaling \$339,000, MPA did not have documentation on file to support seven subcontractor billings included on related contractor invoices totaling \$74,600. Despite the lack of support for the subcontractor billings, all of the invoices had been approved by the contract administrator. We subsequently obtained the support for these charges directly from the contractor.

Recommendation 2

We recommend that MPA

- a. ensure cost estimates and project change orders are reviewed and approved prior to commencement of the related services; and**
- b. obtain and review support for subcontractor costs invoiced, including those noted above.**

Office of the Secretary

June 20, 2019

Mr. Gregory A. Hook, CPA
Office of Legislative Audits
Department of Legislative Services
301 West Preston Street, Room 1202
Baltimore MD 21201

Dear Mr. Hook:

Enclosed please find the Maryland Department of Transportation Maryland Port Administration's (MDOT MPA) responses to the Office of Legislative Audit's audit report on the special review of the MDOT MPA. Additionally, an electronic version of this document has been sent to your office via email.

If you have any additional questions or concerns, please contact Ms. Jaclyn D. Hartman, MDOT Chief Financial Officer, at 410-865-1035 or jhartman1@mdot.maryland.gov. Of course, you may always contact me directly.

Sincerely,



Pete K. Rahn
Secretary

Enclosure

cc: Mr. John G. Arnold, Internal Auditor, MDOT MPA
Ms. Brenda Cachuela, Director, Office of Audits, MDOT
Ms. Jaclyn Hartman, Chief Financial Officer, Office of Finance, MDOT
Mr. R. Earl Lewis, Jr., Deputy Secretary of Policy, Planning, and Enterprise Services, MDOT
Mr. James F. Ports, Jr., Deputy Secretary of Operations, MDOT
Ms. Wonza Spann-Nicholas, Chief Financial Officer and Treasurer, MDOT MPA
Mr. James J. White, Executive Director, MDOT MPA

Maryland Port Administration
Special Review

Agency Response Form

Scope, Objectives, and Methodology

Agency Response	
Scope, Objectives, and Methodology	Factually Accurate
Please explain any concerns with factual accuracy.	N/A

Background Information

Agency Response	
Background Information	Factually Accurate
Please explain any concerns with factual accuracy.	N/A

Findings and Recommendations

Finding 1 MPA did not ensure certain construction-related services were competitively procured in accordance with the terms of the property management contract. In addition, the MPA contract administrator directly contacted and obtained proposals from certain vendors and referred them to the contractor to use as subcontractors.

We recommend that MPA

- ensure the contractor competitively procures subcontractor services in accordance with the contract,
- comply with State procurement regulations and discontinue the practice of directing contractors to use specific vendors as subcontractors, and
- establish procedures for a formal independent review and approval of projects with the contractor.

Maryland Port Administration
Special Review

Agency Response Form

Agency Response			
Background / Analysis	Factually Accurate		
Please explain any concerns with factual accuracy.	N/A		
Recommendation a	Agree	Estimated Completion Date:	June 28, 2019
Please provide details of corrective action or explain disagreement.	<p>In accordance with the Property Management Contract, the MDOT MPA will ensure that the required bid documentation for construction-related services are competitively procured, properly approved and retained on file for audit verification.</p> <p>Additionally, emergencies and other exceptions (in accordance with the contract language) will require supervisory review and approval.</p>		
Recommendation b	Agree	Estimated Completion Date:	June 28, 2019
Please provide details of corrective action or explain disagreement.	<p>In accordance with the Property Management Contract, the MDOT MPA will discontinue the practice of advising the contractor in the use of specific vendors as sub-contractors. The instance referenced in the Audit Report was a result of using a vendor based on a history of the work-related expertise to benefit the quality of work for the World Trade Center.</p> <p>Emergencies and other extraordinary exceptions in accordance with the contract language will require supervisory review and approval.</p>		
Recommendation c	Agree	Estimated Completion Date:	June 28, 2019
Please provide details of corrective action or explain disagreement.	<p>The MDOT MPA will establish written procedures to require and ensure that a formal independent review and approval of projects is conducted by the Engineering Division and the Director of Commercial Management.</p>		

Maryland Port Administration
Special Review

Agency Response Form

Finding 2

MPA did not always approve project cost estimates prior to the start of work and did not approve certain change orders. In addition, MPA did not have required support for certain contractor invoices tested.

We recommend that MPA

- a. ensure cost estimates and project change orders are reviewed and approved prior to commencement of the related services;**
- b. obtain and review support for subcontractor costs invoiced, including those noted above.**

Agency Response			
Background / Analysis	Factually Accurate		
Please explain any concerns with factual accuracy.	N/A		
Recommendation a	Agree	Estimated Completion Date:	June 28, 2019
Please provide details of corrective action or explain disagreement.	The MDOT MPA will establish procedures to ensure cost estimates and project change orders are reviewed and approved by the Engineering Division and the contract administrator supervisor prior to the commencement of related services. These procedures will include pre-determined thresholds for further review and approval of cost estimates and change orders by the Engineering Division and the Director of Commercial Management prior to the commencement of related services.		
Recommendation b	Agree	Estimated Completion Date:	June 28, 2019
Please provide details of corrective action or explain disagreement.	The MDOT MPA will establish procedures to ensure all supporting subcontractor costs invoiced is attached to the contractor invoice for review and approval by the contract administrator. Additionally, subsequent review and approval by the Finance Division is required before the invoice is paid.		