

Special Review

**Maryland Department of Transportation
Maryland Transit Administration**

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

January 2019



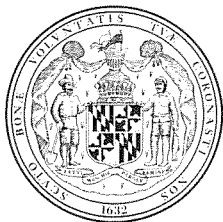
OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

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January 7, 2019

Senator Craig J. Zucker, Co-Chair, Joint Audit Committee
Delegate C. William Frick, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We conducted a review of allegations received through our fraud, waste, and abuse hotline regarding the Maryland Department of Transportation (MDOT) – Maryland Transit Administration (MTA). The allegations related to possible violations of State laws, regulations, and policies involving an MTA management employee directing a prime contractor to pay another vendor for work unrelated to the contract, as well as a possible relationship between this employee and a light rail maintenance vendor (hereinafter referred to as the “related vendor”). We reviewed seven contracts that covered the period from October 2012 through September 2022 and were collectively valued at \$42.2 million. The MTA management employee referenced in the allegations was the project manager for six of the seven contracts involving MTA’s light rail operations, collectively valued at \$24.2 million.

Our review disclosed that MTA included language in certain contracts that allowed its employees to circumvent State procurement regulations by directing the contractors to use specific vendors as subcontractors. The MTA management employee used this capability to direct work to specific vendors as subcontractors including one vendor with which the management employee had less than an arm’s-length relationship (related vendor). The related vendor was paid \$3 million for the subcontracted work. Due to the questionable nature of certain of this activity, we referred this matter 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.

Our review also identified questionable procurement and contract monitoring practices, which may have limited competition and precluded effective

monitoring of contracts and related payments. For example, MTA combined, in a single procurement, specialized maintenance and repair of light rail tracks with general maintenance and repairs at MTA facilities. Furthermore, the awards were based on bids for a single anticipated project and the bids did not include fixed hourly rates for labor. Rather, the pricing was established during the award of individual task orders over which the MTA management employee had control.

MTA also issued task orders under certain of these contracts for projects valued at more than \$500,000 that should have been separately procured in accordance with MTA policy. The MTA management employee had control over three of these task orders totaling \$5.8 million, including two task orders (payments totaling \$5.1 million) that included charges for work performed by the related vendor as a subcontractor. MTA also did not retain copies of the task orders and critical bid documents, and did not obtain certain required approvals for the task orders. Furthermore, MTA did not obtain sufficient information to support amounts billed. For example, 11 invoices totaling \$779,000 included no subcontractor invoices to support the amounts billed by the prime contractors, including 6 invoices totaling \$109,400 for work performed by the related vendor. In addition, 2 of the 11 invoices totaling \$392,900 included charges totaling \$84,100 that appeared excessive.

Finally, the MTA management employee directed and monitored four snow and ice removal contracts totaling \$6.2 million involving the related vendor. As of August 2018, MTA had made payments totaling \$3.6 million under the four contracts, of which \$1.5 million was paid to the related vendor either as a subcontractor or as a prime contractor.

MDOT's response, on behalf of MTA, to our findings and recommendations is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this review by MTA.

Respectfully submitted,

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

Gregory A. Hook, CPA
Legislative Auditor

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Scope, Objectives, and Methodology

We conducted a review of allegations received through our fraud, waste, and abuse hotline regarding the Maryland Department of Transportation (MDOT) – Maryland Transit Administration (MTA). The allegations related to possible violations of State laws, regulations, and policies involving an MTA management employee directing a prime contractor to pay another vendor for work unrelated to the contract, as well as a possible relationship between this employee and a light rail maintenance vendor (hereinafter referred to as the “related vendor”). The purpose of our review was to determine whether the allegations we received were 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 three contracts awarded to the prime contractor identified in the allegations, including two contracts in which work was subcontracted to the related vendor. We also identified and reviewed four light rail snow and ice removal contracts involving the related vendor as either a subcontractor or the prime contractor. These seven contracts covered the period from October 2012 through September 2022 and were collectively valued at \$42.2 million (Table 1 on page 7). The MTA management employee referenced in the allegations was the project manager for six of the seven contracts involving MTA’s light rail operations, collectively valued at \$24.2 million.

Our review consisted of tests, analyses, observations, and discussions with MTA personnel and others, as we deemed necessary, to achieve our objectives. The results of our review, which substantiated the allegations, are described in detail in Findings 1 and 4. Our review also identified issues with the procurement of the contracts and task orders and monitoring of the related payments, which are identified in Findings 2 and 3, certain of which involved the MTA management employee. Additional contract procurement and monitoring deficiencies identified as a result of other referrals to our fraud, waste, and abuse hotline were included in our fiscal compliance audit report of MTA dated November 20, 2018.

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

The response from MDOT, on behalf of MTA, 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 Transit Administration (MTA), a transportation business unit of the Maryland Department of Transportation, is responsible for the construction, operation, and maintenance of the Baltimore metropolitan area transit system and commuter services in suburban areas of the State. Transit modes include the Metro subway, bus, light rail, and the Maryland Rail Commuter (MARC) service. MTA is headquartered in Baltimore City and maintains a workforce of approximately 3,400 employees. According to State records, during fiscal year 2017, MTA's operating and capital expenditures totaled approximately \$1.42 billion.

Overview

The hotline allegations we received related to possible violations of State laws, regulations, and policies involving an MTA management employee directing a prime contractor to pay another vendor for work unrelated to the contract, as well as a possible relationship between this employee and a light rail maintenance vendor (hereinafter referred to as the "related vendor"). We reviewed three contracts for ancillary services that were awarded to this contractor¹ (as well as to two other prime contractors) with a combined value of \$36 million, including two contracts that used the related vendor as a subcontractor. We also identified and reviewed four snow and ice removal contracts, collectively valued at \$6.2 million, that involved the related vendor as either the prime contractor or a subcontractor.

All of the contracts reviewed were competitively procured by MTA's Procurement Department based on the specifications and deliverables established by the respective departments. Once awarded, the respective departments were delegated responsibility for administering the contracts, assigning and monitoring the work, and approving the related invoices. The conditions noted during our review primarily related to the activities that were delegated to the respective departments, including the Light Rail Operations department in which the MTA management employee worked.

¹ The contractor had additional contracts with MTA that were not included in this review.

Ancillary Service Contracts

MTA uses ancillary service contracts to obtain the services of prequalified prime contractors (generally at least three) to perform necessary support of transportation operations using a task order system for projects undertaken within the scope of each contract. According to MTA policy, the task orders on these contracts are to be used for smaller projects valued at \$500,000 or less. Any project valued at more than \$500,000 is to be competitively procured as a separate contract. After the initial award of the contract, the respective departments are to solicit bids from the prequalified prime contractors based on written task orders that define the scope of work to be performed. The prime contractor that responds with the lowest bid is awarded the task order for that project.

As noted above, the three ancillary service contracts we reviewed were competitively procured by the MTA Procurement Department, each of which was awarded to three prime contractors. One of the prime contractors² for each of the three contracts was the contractor identified in the allegations. One of the ancillary service contracts was for agency-wide repairs and maintenance on MTA's security and wireless systems. The other two contracts were for maintenance and repairs on the light rail tracks and light rail facilities (such as HVAC, electrical, and minor construction).

Snow and Ice Removal Contracts

MTA's Light Rail Operations Unit uses vendors to perform snow and ice removal at its light rail stations and facilities. MTA competitively procured and awarded contracts for snow and ice removal on light rail station platforms and sidewalks within each of its three regions (Northern, Central, and Southern). A separate contract is used for snow and ice removal services in light rail parking lots.

The four snow and ice removal contracts we reviewed were for light rail station platforms and sidewalks in the Northern and Central regions which involved the related vendor. Two contracts for the period from October 2012 through September 2017 were awarded to one vendor that subcontracted work to the related vendor. Two other contracts for the period from September 2017 through September 2022 were awarded directly to the related vendor (Table 1 on page 7).

² This contractor operates as two separate business entities with the same directors, officers, and business address. For the purposes of our review, we treated these entities as one contractor.

Table 1
Contracts Selected for Review

Contract Scope	Role of Related Vendor	Contract Term	Value (<i>original value plus modifications</i>)	Payments as of August 2018	Payments to Related Vendor
Ancillary repair and maintenance of security and wireless systems	None	January 2015 to January 2020	\$18,000,000	\$15,565,940	\$0
Ancillary light rail facility and track maintenance*	Subcontractor	June 2014 to June 2019	9,000,000	8,999,013	1,881,723
Ancillary light rail facility and track maintenance*	Subcontractor	October 2016 to October 2021	9,000,000	5,004,987	1,119,195
Snow and ice removal at light rail platforms and sidewalks*	Subcontractor	October 2012 to September 2017	1,874,950	1,522,539	781,005
Snow and ice removal at light rail platforms and sidewalks*	Subcontractor	October 2012 to September 2017	1,872,150	1,526,012	87,320
Snow and ice removal at light rail platforms and sidewalks*	Prime Contractor	September 2017 to September 2022	1,240,400	322,960	322,960
Snow and ice removal at light rail platforms and sidewalks*	Prime Contractor	September 2017 to September 2022	1,240,400	272,100	272,100
		Totals	\$42,227,900	\$33,213,551	\$4,464,303

Source: MTA and Contractor Records

*The MTA management employee referenced in the allegations was the project manager for these contracts.

According to MTA and contractor records, as of August 2018, contractor payments under these seven contracts totaled \$33.2 million, including \$4.5 million paid to the related vendor. The MTA management employee referenced in the allegations was the project manager for the six light rail contracts selected for review. As project manager, the MTA management employee, or the employee's subordinates, were responsible for establishing task orders under these contracts, awarding and monitoring the work, and approving related invoices.

Based on our review, we identified certain questionable matters as described in the findings which follow. Consequently, based on the nature and entirety of these matters, we referred them 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 that require corrective action by MTA.

MTA should consult with the Office of the Attorney General – Criminal Division before taking any actions related to the findings contained in this report. A referral to the Criminal Division does not mean that a criminal act has actually occurred or that criminal charges will be filed.

Findings and Recommendations

Ancillary Service Contracts

Finding 1

MTA included language in certain contracts that allowed its employees to circumvent State procurement regulations by directing the contractors to use specific vendors as subcontractors. An MTA management employee used this capability in two ancillary service contracts to direct work to a vendor with whom the employee had less than an arm's-length relationship.

Analysis

MTA included language in certain contracts that allowed its employees to circumvent State procurement regulations by directing the prime contractors to use specific vendors as subcontractors. An MTA management employee used this capability to direct work to a vendor with whom the employee had less than an arm's-length relationship. We also noted certain questionable payments to the related vendor for certain contracts managed by the MTA employee.

We reviewed three five-year ancillary service contracts collectively valued at \$36 million (see table) that were each awarded to the prime contractor identified in the allegations and two other prime contractors. The vendors used as subcontractors on these contracts were not specified in the initial contract awards; rather, they were selected during the task order solicitation process and/or subsequent to the award of the task orders.

Table 2
Contracts with Improper Contract
Language Selected for Review

Scope	Term	Value
Repairs and maintenance of security and wireless systems	January 2015 to January 2020	\$18 million
Light rail facility and track maintenance	June 2014 to June 2019	9 million
Light rail facility and track maintenance	Oct. 2016 to Oct. 2021	9 million
Total		\$36 million

Source: MTA Records

Contract Language Allowed MTA to Circumvent Procurement Regulations

MTA included language in these three contracts that allowed its employees to direct the prime contractors to use certain vendors as subcontractors, circumventing State procurement regulations. Specifically, the ability to choose subcontractors to perform work under the prime contractor through a non-competitive arrangement compromises the integrity of the original competitively awarded contract.

In addition, MTA allowed the prime contractors to charge higher overhead rates for using these vendors. Specifically, the contract terms allowed the prime contractor to charge an overhead rate of up to 5 percent when work was performed by a subcontractor selected by the contractor, and up to 10 percent when work was performed by a subcontractor selected by MTA. MTA subsequently used each of these three contracts to direct work to certain vendors as subcontractors. The vendors on the task orders we reviewed reported directly to MTA with no apparent added value from the prime contractors, whose role was limited to billing MTA for the services.

The use of these contracts to direct work to specific vendors enabled MTA to circumvent State procurement regulations and resulted in increased cost for the services because of the aforementioned overhead fees. For example, our review of two task orders for the security and wireless systems maintenance contract totaling approximately \$3,219,000 and \$255,000 respectively, disclosed that MTA used the task orders to obtain information technology services from two incumbent vendors whose contracts had expired. MTA directed the prime contractors to use these vendors as subcontractors and specified the related rates (based on MTA's prior contracts with these vendors).

These services should have been procured as separate contracts, and MTA should have obtained Board of Public Works (BPW) approval and published the awards on *eMaryland Marketplace*, as required by State procurement regulations. We confirmed with BPW staff that, under these circumstances, including language in the contracts allowing MTA to direct work to specific vendors was improper and violated State procurement regulations.

This practice also resulted in MTA paying overhead rates which would not have been paid had the contracts been procured directly with the vendors. Specifically, although the contract provided for a 10 percent overhead rate when using the MTA selected vendors, MTA requested the prime contractors to bid on the overhead rates they would charge to use the MTA selected vendors. The MTA chosen prime contractor ultimately was paid \$144,000 in overhead fees for the two aforementioned task orders.

We could not readily determine the total number of contracts procured by MTA that included the aforementioned language permitting the circumvention of State procurement regulations. However, we reviewed 10 other contracts listed on *eMaryland Marketplace*, collectively valued at \$101.9 million, which were awarded by MTA during the period from June 2016 through July 2018. Four of these contracts totaling \$72.5 million, all of which were ancillary service

contracts, included the language authorizing MTA to select the subcontractors and provided for the increased overhead rates.

MTA Management Employee Relationship with a Vendor

An MTA management employee directed prime contractors on the two \$9 million light rail contracts to subcontract work to a vendor with whom the employee had less than arm's-length relationship. Specifically, we were advised by two prime contractors that, when procuring the task orders, the MTA management employee would notify the contractors that they were required to use this related vendor or would direct them to use the related vendor after the task order was awarded. Our review disclosed the following relationships between the management employee and the vendor:

- Two employees of the vendor are close relatives of the MTA management employee.
- Two other employees of the vendor resided at properties owned by the MTA management employee.
- The vendor's Chief Financial Officer operated a business out of a property owned by the MTA management employee.

Our review of MTA records disclosed further indicators of a possible relationship between the management employee and the related vendor. Specifically, we found personnel and payroll information for the related vendor's employees in the offices of the MTA management employee or the employee's subordinates, as well as correspondence from the MTA management employee's subordinates directing the related vendor to hire certain employees.

A prime contractor advised us that the related vendor's employees reported to MTA's light rail headquarters every day to receive their daily work orders from MTA staff and then submitted their weekly timesheets to the MTA management employee or one of the employee's subordinates for approval. The related vendor then submitted its invoices to the prime contractors, which paid the invoices without any review or direct knowledge of the work performed. The prime contractors incorporated the related vendor's charges into the invoices they submitted to MTA for payment, along with the previously mentioned overhead fees, which were approved for payment by the MTA management employee or the subordinates.

Questionable Payments Were Made to a Related Vendor

According to MTA and contractor records as of August 2018, \$3 million of the then \$14 million in payments on these contracts were directed to the related vendor selected by the MTA management employee, certain of which we found to be questionable. Specifically, at the direction of the management employee, the related vendor was paid \$192,000 to perform snow removal and train cleaning services that should have been provided under separate existing contracts specifically designed for these services.

The rates paid to the related vendor to perform these services also exceeded the rates on the other existing contracts. For example, our review of three invoices totaling \$66,400 for snow removal and train cleaning services disclosed that MTA paid \$20,000 more than if the services had been obtained under the other contracts intended for these services. In addition, certain tasks performed by the related vendor were not maintenance-related services and, therefore, did not appear to be appropriate under the contracts. For example, one \$15,420 invoice for multiple services included charges for delivering bottled water to a light rail office and driving a light rail operations employee to a hardware store to purchase cleaning supplies.

These questionable payments, coupled with the relationships we described above, raise questions about a possible conflict of interest between the MTA management employee and the related vendor. Legal counsel for the State Ethics Commission advised us that the MTA management employee's participation in matters involving this vendor (such as directing the contractor to use the vendor's services and monitoring of the contracts) could potentially violate several conflict of interest provisions of State ethics law. Any final decision related to violations of State ethics law would ultimately be determined by the State Ethics Commission.

Recommendation 1

We recommend that MTA

- a. remove the aforementioned language, which permitted the circumvention of State procurement regulations, from future contracts, and discontinue the practice of directing contractors to use specific vendors as subcontractors on existing contracts;**
- b. take appropriate action regarding the MTA management employee's continued involvement with these contracts;**
- c. refer the matter to the State Ethics Commission after consulting with the Office of the Attorney General – Criminal Division; and**

- d. after consulting with the Office of the Attorney General – Criminal Division, review the aforementioned questionable payments and recover any amounts determined to be improperly paid to the related vendor.

Finding 2

The structure and basis of award of the light rail ancillary service contracts may have limited competition and did not ensure the State received the most advantageous prices. In addition, the security and wireless ancillary service contract was awarded to contractors that did not appear to meet the contract's technical qualifications.

Analysis

The structure and basis of award of the light rail ancillary service contracts may have limited competition and did not ensure the State received the most advantageous prices. In addition, the ancillary contract for repairs and maintenance of security and wireless systems was awarded to contractors that did not appear to meet the contract's technical qualifications.

- MTA may have limited competition in the procurement of the most recently awarded light rail facility and track maintenance contract by changing the experience requirements. In addition, we question the appropriateness of combining, in a single procurement, specialized maintenance and repair of light rail tracks with general maintenance and repairs at MTA facilities (such as painting, electrical, plumbing, and HVAC).

For the June 2014 contract, the Invitation for Bids (IFB) required prospective contractors or their subcontractors to have the qualifications to perform both track maintenance and facility maintenance. The IFB for the more recent October 2016 contract added a further requirement that prospective contractors have 10 years of experience in completing track maintenance and repairs, and provide references for three major track-related projects completed within the last five years. These increased requirements may have limited competition on the recent contract because MTA only received 4 bids on the IFB for that contract compared to 11 bids on the earlier contract's IFB.

In our opinion, the combination of track maintenance with general facility maintenance work did not seem appropriate for either IFB. Based on our review of the task orders awarded as of May 2018 under these two contracts, the majority of work performed for both related to facility maintenance. For example, \$6.1 million of the \$9 million paid on one of the contracts (68 percent) related to painting, electrical, HVAC, and building maintenance

projects, which did not require any light rail track maintenance and repair experience or skills.

The method used to award the two light rail contracts provided no assurance that the State received the most advantageous pricing. Each contract was awarded based on bids for a single anticipated project that we did not judge to be representative of the comprehensive services to be provided under the scope of the contracts. Specifically, the June 2014 contract was awarded based on bids to install trackside fencing, and the October 2016 contract was awarded based on bids to supply and install a new generator and fuel tank at a light rail facility. In addition, the bids did not include fixed hourly rates for personnel categories (such as supervisor, laborer) to be used on all task orders awarded during the term of the contracts.

As a result, the pricing of the services obtained under both contracts was established during the solicitation and award of the task orders over which the MTA management employee had control. This may have enabled the MTA management employee to direct work to the related vendor through the prime contractors.

- Two of the three prime contractors that were awarded the contract valued at \$18 million for repairs and maintenance of MTA security and wireless systems did not demonstrate that they met the contract's technical experience and qualification requirements. As noted in Finding 1, MTA subsequently used this contract to subcontract most of the work to two incumbent vendors whose contracts had expired. The lack of qualifications of the awarded contractors was raised as a concern by the one losing bidder prior to the award.

To "cure" the situation, MTA allowed these two contractors to submit additional documentation of their qualifications, such as employee resumes. However, one of the contractors submitted documentation that, in our opinion, was vague and did not appear to support the contractor's qualifications. MTA could not provide us with any additional documentation from the other contractor. The failure to meet contract qualifications should have resulted in disqualifying these bidders. MTA advised us that it chose not to disqualify these two bidders because of its desire to award the contract to three prime contractors.

Recommendation 2

We recommend that MTA

- a. maximize competition on future ancillary contracts by establishing appropriate qualifications and separating contracts for disparate services,**
- b. require bidders on future contracts to provide specific labor rates to be used in the contract to ensure the State receives the most advantageous pricing,**
- c. retain all critical procurement documents,**
- d. ensure contracts are only awarded to vendors who meet the qualifications established in the solicitation, and**
- e. terminate the aforementioned contracts if MTA subsequently determines the vendors do not meet the required qualifications.**

Finding 3

MTA improperly issued task orders for larger projects that should have been separately procured in accordance with MTA policy, did not retain copies of the task orders and critical bid documents, and did not obtain required approvals for the task orders. In addition, MTA did not properly monitor the amounts paid under the task orders and obtain support for the related invoices.

Analysis

MTA improperly issued task orders for larger projects that should have been separately procured in accordance with MTA policy, did not retain copies of the task orders and critical bid documents, and did not obtain required approvals for the task orders. In addition, MTA did not properly monitor the amounts paid under the task orders and obtain support for the related invoices. We tested 12 of the 74 task orders that were issued under the three ancillary contracts discussed in Findings 1 and 2. These 12 task orders had expenditures totaling \$9.9 million.

- MTA used the contracts for the completion of large maintenance projects that should have been separately procured in accordance with MTA policy. The aforementioned contracts were all “ancillary service” contracts which, according to MTA policy, are to be used for smaller projects. The policy requires any project valued at more than \$500,000 to be competitively procured as a separate contract. Our review disclosed that, as of June 21, 2018, 4 of the 12 task orders tested had payments to the prime contractors totaling \$3.2 million, \$2.4 million, \$1.9 million, and \$762,000 – each of which, according to MTA policy, should have been competitively procured as a separate contract. The MTA management employee had control over three

of these task orders totaling \$5.8 million, including two task orders (payments totaling \$5.1 million) that included charges for work performed by the related vendor as a subcontractor.

- The files of the MTA management employee did not have documentation of the task orders or the related winning bids for three of these task orders for which payments to the prime contractors totaled \$3.5 million, and did not have documentation of the losing bids for seven task orders for which payments totaled \$4.3 million. Two of the task orders with payments totaling \$3.3 million, for which there was no documentation of any bids, included payments to the related vendor for work it performed as a subcontractor. Because of the lack of documentation, we could not determine whether services were provided in accordance with the task orders, whether the task orders were awarded to the lowest bidders, and whether the rates paid were proper.
- MTA's Task Order Review Committee (TORC) did not review and approve 8 of the 12 task orders tested (including 6 under the control of the MTA management employee) with payments to the prime contractors totaling \$8.5 million. Of the 6 task orders under the control of the management employee that were not approved, 3 task orders totaling \$5.2 million included charges for work performed by the related vendor as a subcontractor. MTA's *Procurement Policies and Procedures Manual* requires task orders be reviewed and approved by the TORC prior to execution to ensure there are no ethics issues, that rates are reasonable, and to verify the availability of funding.
- The MTA management employee did not maintain a record of costs nor monitor the amounts paid on each task order, which resulted in payments exceeding the amounts authorized on two task orders. Specifically, MTA processed payments totaling \$1.9 million on one task order valued at \$721,900. This task order included payments to the related vendor and was not approved by the TORC. Furthermore, as noted above, the initial value of the task order required that the services be competitively procured as a separate contract. For the other \$200,000 task order, MTA processed payments totaling approximately \$762,400.
- Amounts invoiced on the task orders were not always supported to allow MTA to substantiate the propriety of the amounts billed, and certain charges appeared excessive. Our test of 27 invoices totaling \$1.9 million (including 23 invoices paid on the two ancillary light rail contracts) disclosed that the MTA management employee did not ensure documentation was provided by

the prime contractors to support subcontractor billings and labor charges on 14 invoices totaling \$826,000. For example, 11 invoices totaling \$779,000 included no subcontractor invoices to support the amounts billed by the prime contractors, including 6 invoices totaling \$109,400 for work performed by the related vendor. In addition, 2 of the 11 invoices totaling \$392,900 included \$84,100 in charges that appeared excessive. For example, the invoices included charges totaling \$36,000 for the contractor's use of equipment that was not approved in the task order. Finally, our comparison of current market pricing, based on an Internet search, to the equipment rates paid by MTA disclosed that payments were higher than the average market rates by more than \$10,000.

Recommendation 3

We recommend that MTA

- a. competitively procure tasks expected to exceed \$500,000 and only use the ancillary contracts in accordance with MTA policy;**
- b. attempt to obtain the aforementioned missing task orders and bid documentation, ensure the tasks were properly awarded, and retain critical documents for future task orders;**
- c. submit the task orders to the TORC for review and approval, including a retroactive submission of those noted in the finding;**
- d. maintain a record of specific costs on each task order and ensure costs do not exceed the value of the related task orders;**
- e. obtain and review support for amounts invoiced, including those noted above; and**
- f. ensure amounts invoiced are consistent with the task orders and take appropriate action for any amounts billed that appear excessive.**

Snow and Ice Removal Contracts

Finding 4

The MTA management employee directed and monitored four snow and ice removal contracts totaling \$6.2 million involving the vendor with whom the employee had a relationship.

Analysis

The MTA management employee directed and monitored four competitively procured light rail platform and sidewalk snow and ice removal contracts, collectively valued at \$6.2 million (see table), that involved the related vendor (identified in Finding 1) with which the employee had less than an arm's-length relationship. As noted in the table to the right, these four contracts consisted of two consecutive five-year contracts for the Central (Baltimore City) and Northern (Baltimore County) Regions. We also noted a questionable bidding practice, as the related vendor was either the prime contractor or a subcontractor for a second vendor that also bid on all four contracts. Specifically, both the related vendor and the second vendor bid on each contract and listed each other as subcontractors in their respective bid submissions. As of August 2018, MTA had made payments totaling \$3.6 million under the four contracts, of which \$1.5 million was paid to the related vendor, as either the prime contractor or subcontractor.

Table 3
Light Rail Snow and
Ice Removal Contracts

Scope	Term	Value
14 Light Rail Platforms and Sidewalks in the Central Region	October 2012 to September 2017	\$1,874,950
9 Light Rail Platforms and Sidewalks in the Northern Region	October 2012 to September 2017	1,872,150
14 Light Rail Platforms and Sidewalks in the Central Region	September 2017 to September 2022	1,240,400
9 Light Rail Platforms and Sidewalks in the Northern Region	September 2017 to September 2022	1,240,400
Total		\$6,227,900

Source: MTA Records

The relationship between the MTA management employee and the related vendor (which, based on our review of State expenditure data, did not receive payments from any other State agencies during this period) and the questionable bidding practice brings into question the integrity of the award of these contracts. Specifically, although MTA competitively procured and awarded these contracts based on the lowest hourly rate for an estimated 1,400 regular and 700 overtime hours per year, the MTA management employee was responsible for authorizing the number of hours the vendor could work (including overtime). Consequently,

the vendors could have potentially submitted low hourly rates to win the contract awards, with knowledge that the amount ultimately paid to the vendors was dictated by the number of hours the MTA employee later authorized for the work. In this regard, MTA subsequently increased the contract value for the two contracts for the earlier five-year period (October 2012 to September 2017) by a total of \$694,000 for additional services to be provided during critical snow events in calendar year 2016, because the amounts of the original contracts had been expended.

We observed that the MTA management employee or the employee's subordinate approved invoice payments related to these contracts. We could not determine the propriety of the hours billed or the aforementioned \$694,000 increase in contract value (a portion of which was not spent). Although our test of invoices disclosed that the dates the services provided related to days of documented inclement weather, we could not determine if the hours billed were reasonable.

Recommendation 4

We recommend that MTA

- a. review the procurement of the four snow and ice removal contracts to reassess the integrity of the award process;**
- b. review each invoice submitted under these contracts to determine whether the hours invoiced were justified and proper, and take appropriate corrective action for any questionable billings; and**
- c. to the extent any award is deemed to have been compromised, consider terminating the active contract with the aforementioned vendor that had a relationship with the MTA management employee.**

APPENDIX



Office of the Secretary

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary

January 4, 2018

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

Dear Mr. Hook:

We are providing this letter as the official Maryland Department of Transportation Maryland Transit Administration (MDOT MTA) response to the Special Report dated December 2018.

We take the audit findings very seriously. We have resolved many areas of concern and are actively working towards compliance with the remaining report recommendations in a manner outlined in the responses. Enclosed is our detailed agency response. Additionally, an electronic version of this document was emailed to your office.

If you have any additional questions or concerns, please contact Ms. Jaclyn Hartman, MDOT Chief Financial Officer, at 410-865-1035 or jhartman@mdot.state.md.us. Ms. Hartman will be happy to assist you. Of course, you may always contact me directly.

Sincerely,

A handwritten signature in black ink that reads "Pete K. Rahn". The signature is written in a cursive style with a large, stylized "P" and "R".

Pete K. Rahn
Secretary

Confidential Enclosures

cc: Ms. Brenda Cachuela, Director, Office of Audits, MDOT
Mr. Glenn Davis, Chief Financial Officer, MDOT MTA
Ms. Jaclyn D. Hartman, Chief Financial Officer, MDOT
Mr. Tecla Kellum, Director of Audits, MDOT MTA
Mr. James F. Ports, Jr., Deputy Secretary of Operations, MDOT
Mr. Kevin B. Quinn, Jr. Administrator, MDOT MTA

**Maryland Department of Transportation
Maryland Transit Administration
Special Review Audit Responses**

Ancillary Service Contracts

Finding 1

MTA included language in certain contracts that allowed its employees to circumvent State procurement regulations by directing the contractors to use specific vendors as subcontractors. An MTA management employee used this capability in three ancillary service contracts to direct work to a vendor with whom the employee had less than an arm's-length relationship.

Recommendation 1

We recommend that MTA

- a. remove the aforementioned language, which permitted the circumvention of State procurement regulations, from future contracts, and discontinue the practice of directing contractors to use specific vendors as subcontractors on existing contracts;**
- b. take appropriate action regarding the MTA management employee's continued involvement with these contracts;**
- c. refer the matter to the State Ethics Commission after consulting with the Office of the Attorney General – Criminal Division; and**
- d. after consulting with the Office of the Attorney General – Criminal Division, review the aforementioned questionable payments and recover any amounts determined to be improperly paid to the related vendor.**

Responses:

- a. The MDOT MTA concurs with the recommendation. Beginning in 2012, the language in question was included on a limited number of contracts that were approved through the normal procurement process. In 2017, the Secretary of Transportation consolidated all MDOT MTA procurement activities under the MDOT Secretary's Office (MDOT TSO) to address several procurement concerns. The current administration agrees that language directing contractors which subcontractors to use and allowing contractors to charge higher overhead rates in certain circumstances is inappropriate and will not be included in future contracts.

The MDOT MTA is creating a new process whereby all task and work orders against Master Contracts will be reviewed and approved by the Office of Procurement. The process will include a review of the task/work order to validate that it is within the scope of the contract and, when appropriate, ensure a change order is issued to add additional subcontractors. In the interim, all task orders will continue to be submitted to the Task Order Review Committee (TORC) for approval. Since June 2018, a representative from the Office of Procurement is an active member of the TORC to ensure that the proposed task orders are within the scope of the contract and that a task order, rather than a new procurement, is warranted. The process has also been changed so that the Office of Procurement must now approve all task orders. Management will also establish a process that will verify that all task

orders are submitted until the new process is implemented. Standard operating procedures will be updated in early 2019.

- b. The MDOT MTA concurs with the recommendation. The management employee was removed as the project manager on the noted contracts. The employee's actions are under review by the Office of the Attorney General (OAG) – Criminal Division. Referral to the State Ethics Commission is contingent on the outcome of the OAG – Criminal Division review and the return of records from the OAG.
- c. The MDOT MTA concurs with the recommendation. On November 2, 2018 the MDOT MTA Administrator informed Chief Legal Counsel at the Office of the Governor of the matter and the matter will be referred to the State Ethics Commission.
- d. The MDOT MTA concurs with the recommendation. All invoices and supporting documentation have been provided to the OAG – Criminal Division. The Operations Project Manager and Audit Compliance Manager will facilitate a review of the noted questionable payments to determine if any amounts were improperly processed and can be recovered once the records are returned. The MDOT MTA will work with the OAG to ensure the appropriate steps are taken to recover the funds.

Finding 2

The structure and basis of award of the light rail ancillary service contracts may have limited competition and did not ensure the State received the most advantageous prices. In addition, the security and wireless ancillary service contract was awarded to contractors that did not appear to meet the contract's technical qualifications.

Recommendation 2

We recommend that MTA

- a. **maximize competition on future ancillary contracts by establishing appropriate qualifications and separating contracts for disparate services,**
- b. **require bidders on future contracts to provide specific labor rates to be used in the contract to ensure the State receives the most advantageous pricing,**
- c. **retain all critical procurement documents,**
- d. **ensure contracts are only awarded to vendors who meet the qualifications established in the solicitation, and**
- e. **terminate the aforementioned contracts if MTA subsequently determines the vendors do not meet the required qualifications.**

Response:

- a. The MDOT MTA concurs with the recommendation but not with the finding. The Office of Procurement does not agree that the cited contract unnecessarily limits competition. Due to the nature of the work being performed under the cited ancillary contract, as well as the location of the work, the qualifications asked of proposed bidders were necessary. Working in a transportation-related environment often requires a vendor to have very specific skill sets and very diverse capabilities.

The Office of Procurement routinely analyzes prospective scopes of work to ensure that disparate scopes are not bundled into a single solicitation unless there is a reasonable justification. Additionally, the Office of Procurement will ensure ancillary invitation for bids include appropriate language that will not limit competition and that the most advantageous prices will be received. Procurement Officers will ensure contracts are awarded to

contractors that meet the contract technical qualifications according to the evaluation criteria that is included in the MDOT MTA procurement manual.

- b. The MDOT MTA concurs with the recommendation. The MDOT MTA maintains that neither State statute nor regulation precludes the award of an ancillary contract based upon the evaluation of a relevant sample task. However, while this practice is commonplace, the Office of Procurement has been working with MDOT MTA business units regarding the criteria for evaluating and awarding future contracts.
- c. The MDOT MTA concurs with the recommendation. Procurement Officer training has emphasized ensuring all critical contract documentation is maintained on file. The contract or project manager for task orders is responsible for obtaining and maintaining critical documentation at the task order level. The Office of Procurement, in conjunction with Operations Management, awarded a contract to develop and instruct a Contract Management curriculum that will include task order management, including requirements for obtaining and maintaining critical documentation. Training is expected to begin in early 2019 and curriculum materials will be maintained to conduct future Contract Management training. MDOT – The Secretary’s Office (MDOT TSO) is also developing Contract Management training that will be offered department wide in 2019. Additionally, a Quality Assurance/Quality Control Manager position was created within the MDOT MTA Office of Procurement and the position is tasked with completing a random sample of contracts to test compliance, which would include ensuring all critical procurement documentation is on file. Based on upcoming regulatory changes related to task order approvals by the BPW, the Office of Procurement has been in conversation with MDOT MTA management regarding possible changes to the task/work order control process. Once the new regulations are promulgated, the MDOT MTA will decide if any additional changes are necessary.
- d. The MDOT MTA concurs with the recommendation. The MDOT MTA agrees that awards should only be granted to vendors who meet the qualifications stated in the solicitation. The MDOT MTA procurement process includes evaluation criteria in a request for proposals (RFP) that an evaluation committee utilizes to ensure vendors meet the qualifications established in the solicitation.
- e. The MDOT MTA concurs with the recommendation. All procurement files and records related to the contract have been provided to the OAG – Criminal Division. Once the records are returned, the Operations Project Manager and Audit Compliance Manager, in conjunction with the Office of Procurement, will complete a review of the procurements of the light rail ancillary service contracts. If it is determined that the vendors did not meet the qualifications established in the solicitation, the MDOT MTA will pursue new contracts as soon as when appropriate, while taking into consideration any effects to operations. In the interim, management of the noted contracts will be removed from Light Rail Operations and managed by Transit Operations Management to provide a higher level of oversight and monitoring of these contracts.

Finding 3

MTA improperly issued task orders for larger projects that should have been separately procured in accordance with MTA policy and did not retain copies of the task orders and critical bid documents nor obtain required approvals for the task orders. In addition, MTA did not properly monitor the task orders and obtain support for the related invoices.

Recommendation 3

We recommend that MTA

- a. competitively procure tasks expected to exceed \$500,000 and only use the ancillary contracts in accordance with MTA policy;**
- b. attempt to obtain the aforementioned missing task orders and bid documentation, ensure the tasks were properly awarded, and retain critical documents on future task orders;**
- c. submit the task orders to the TORC for review and approval, including a retroactive submission of those noted in the finding;**
- d. maintain a record of specific costs on each task order and ensure costs do not exceed the value of the related task orders;**
- e. obtain and review support for amounts invoiced, including those noted above; and**
- f. ensure amounts invoiced are consistent with the task orders and take appropriate action for any amounts billed that appear excessive.**

Response:

- a. The MDOT MTA concurs with the recommendation. The MDOT MTA is creating a new process whereby all task and work orders against Master Contracts will be reviewed and approved by the Office of Procurement. The process will include a review of the task/work order to validate that it is within the scope of the contract and, when appropriate, ensure a change order is issued to add additional subcontractors. In the interim, all task orders over \$500,000 will continue to be submitted to the TORC for approval according to MDOT MTA policy. Any task orders submitted for review to the TORC will not be approved if it is determined that a new procurement is warranted. Since June 2018, a representative from the Office of Procurement is an active member of the TORC to ensure that the proposed task orders are within the scope of the contract and a task order, rather than a new procurement, is warranted. The process has also been changed so that the Office of Procurement must now approve all task orders. Management will also establish a process that will verify that all task orders are submitted until the new process is implemented. Standard operating procedures will be updated in early 2019.
- b. The MDOT MTA concurs with the recommendation. All procurement files and records related to the contract have been provided to the OAG – Criminal Division. Once the records are returned, management will review procurement files of the Operations area to determine if the task orders and bid documentation noted as missing can be located. If the documentation is located, the Office of Procurement will review to determine if the tasks were properly awarded.

The contract or project manager for task orders is responsible for obtaining and maintaining critical documentation at the task order level. The Office of Procurement, in conjunction with Operations Management, awarded a contract to develop and instruct a Contract Management curriculum which will include task order management that will incorporate requirements for obtaining and maintaining critical documentation. Training is expected to begin in early 2019 and curriculum materials will be maintained to conduct future Contract Management training. MDOT TSO is also developing Contract Management training that will be offered departmentwide in 2019. Additionally, a Quality Assurance/Quality Control Manager position was created within the MDOT MTA Office of Procurement and is tasked with completing a random sample of contracts to ensure compliance.

- c. The MDOT MTA concurs with the recommendation. Operations senior management began a review of the noted contracts to determine which task orders need to be reviewed and approved by the TORC. However, contract records and supporting documentation were turned over to the OAG – Criminal Division. Once the records are returned, the review will be completed, and task orders will be retroactively submitted for review and approval to TORC, if appropriate.
- d. The MDOT MTA concurs with the recommendation. Records of specific costs on each task order are to be maintained by the contract or project manager which are to be used to ensure costs do not exceed the value of related task orders. MDOT MTA will ensure that contract and project managers maintain records of specific costs and utilize those cost to ensure task orders are not exceeded. Additionally, as mentioned previously, Contract Management training will be provided to contract and project managers in 2019 and a newly created Quality Assurance/Quality Control Manager position will audit compliance with these requirements.
- e. The MDOT MTA concurs with the recommendation. All invoices and supporting documentation have been provided to the OAG – Criminal Division. The Operations Project Manager and Audit Compliance Manager will facilitate a review of all the invoices to ensure amounts are adequately supported and consistent with the corresponding task orders once the records are returned. Upon completion of the review, the results will be communicated to executive management who will work with the Office of Legal Counsel as well as consult with the State Ethics Commission to ensure the appropriate steps are taken to recover the funds that are excessive, if appropriate.
- f. Same response as recommendation 3e above.

Snow and Ice Removal Contracts

Finding 4

The MTA management employee directed and monitored four snow and ice removal contracts totaling \$6.2 million involving the related vendor with whom the employee had a relationship.

Recommendation 4

We recommend that MTA

- a. **review the procurement of the four snow and ice removal contracts to reassess the integrity of the award process;**

- b. review each invoice submitted under these contracts to determine whether the hours invoiced were justified and proper, and take appropriate corrective action for any questionable billings; and**
- c. to the extent any award is deemed to have been compromised, consider terminating the active contract with the aforementioned vendor that had a relationship with the MTA management employee.**

Response:

- a. The MDOT MTA concurs with the recommendation. All procurement files and records related to the contract have been provided to the OAG – Criminal Division. Once the records are returned, the Operations Project Manager and Audit Compliance Manager, in conjunction with the Office of Procurement, will complete a review the procurements of the noted snow and ice removal contracts. If it is determined that the integrity of the award process has been compromised, MDOT MTA will pursue new contracts as soon as when appropriate, while taking into consideration any effects to operations. Additionally, if it is found that the vendor acted improperly, or in collusion with the management employee, all legal actions will be considered. In the interim, management of the noted contracts will be removed from Light Rail Operations and managed by Transit Operations Management to provide a higher level of oversight and monitoring of these contracts.
- b. The MDOT MTA concurs with the recommendation. All invoices and supporting documentation have been provided to the OAG – Criminal Division. The Operations Project Manager and Audit Compliance Manager will facilitate a review of all the invoices to determine whether hours invoiced were consistent with other regions once the records are returned. MDOT MTA will subsequently work with the OAG to ensure the appropriate steps are taken to recover the funds for questionable billings, if applicable.
- c. Same response as recommendation 4a above.