Montgomery County, Maryland
Office of the County Executive
Office of Internal Audit

Targeted Internal Control Review
Procure to Pay: Needs Assessment, Solicitation, and Contracting

June 25, 2021

Highlights

Why MCIA Did this Review

The Montgomery County Office of Internal Audit (MCIA) conducted a targeted internal control review (review) of the Montgomery County Government's (County) needs assessment, solicitation, and contracting processes (collectively, the "contracting process" review). The County's Office of Procurement (Procurement) is responsible for establishing the internal control environment for Procurement Contracts (subject to Chapter 11B of the County Code and County Regulations; collectively, "Procurement Regulations") and communicating policies, procedures, and guidance to County departments. The County's Office of the County Attorney (OCA) is responsible for reviewing Procurement Contracts and contracts exempt from or not subject to the County's Procurement Regulations (collectively referred to as "Agreements") for form and legality. Additionally, each County department is responsible for the execution of internal controls for preparing requisitions, solicitations, and contract documentation and selecting qualified vendors to be awarded contracts with the County.

This review is the result of a Procure-to-Pay (P2P) fraud risk assessment that was completed in December 2019. The overall focus of this review was to test the effectiveness of internal controls identified during the P2P Fraud Risk Assessment. Specifically, we tested the effectiveness of internal controls performed by Procurement and OCA. The review was conducted by the accounting firm SC&H Group, Inc., under contract with MCIA.

MCIA is making two recommendations for Procurement and two recommendations for OCA to strengthen the County's internal controls within the needs assessment, solicitation, and contracting sub-processes.

Targeted Internal Control Review Procure-to-Pay: Needs Assessment, Solicitation, and Contracting

What MCIA Found

There appears to be an established control environment with preventive and detective control activities designed to mitigate fraud risks associated with the P2P needs assessment, solicitation, and contracting sub-processes.

We identified outdated policy guidance and a lack of automation/workflow for certain procurement activities in the current Procurement control environment. Additionally, we identified areas where OCA can improve transparency and retention for Agreements.

We identified two recommendations for Procurement to improve efficiency and transparency associated with processes for Procurement Contracts, including:

1. Updating procurement guidance to reflect the current systems, practices, and requirements.
2. Automating and integrating procurement processes to reduce manual processes.

Additionally, we identified two recommendations for OCA to improve controls and mitigate risks associated with processes for Agreements, including:

1. Ensuring the OCA Agreements Database contains the required fields per Administrative Procedure 2-4.
2. Ensuring required documentation is obtained from departments and maintained by OCA in the OCA Agreements Database per Administrative Procedure 2-4.

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Objectives

This report summarizes the review of Montgomery County's (the County) needs assessment, solicitation, and contracting processes (collectively, the "contracting process" review). The contracting process review was performed by SC&H Group, Inc. (SC&H), under contract with the Montgomery County Office of Internal Audit (MCIA). The review included conducting targeted tests/evaluation procedures based on the results of the procure-to-pay (P2P) fraud risk assessment that was completed in December 2019.[1]

The contracting process review focused on how the County manages risks associated with performing needs assessments; preparing, approving, and posting solicitations; and developing and executing contracts. The objectives were to:
1. Determine the purchasing methods and contract types, and departments/offices to review during fieldwork procedures.
2. Develop a test plan to conduct targeted internal control review fieldwork procedures.
3. Evaluate needs assessment, solicitation, and contracting internal controls for design and operational effectiveness.

P2P Fraud Risk Assessment

The following provides an overview of the P2P fraud risk assessment and the results relevant to the current contracting process review. After the P2P fraud risk assessment was completed, the next step was to conduct targeted internal control reviews. This contracting process review is one of the targeted internal control reviews.

P2P Fraud Risk Assessment Overview
The P2P operation is one of a number of enterprise operations (including payroll, cash management, Purchase Cards (not part of the P2P fraud risk assessment), and employee reimbursements) for which core business groups (including the Department of Finance, the Office of Procurement, the Office of the County Attorney, the Office of Human Resources, and the Department of Technology Services) have overall responsibilities. These responsibilities include setting policies and designing appropriate internal controls and processes to ensure a sound control environment and effective operations within the context of the County's decentralized operational environment. In some cases, core business group responsibilities extend to transaction processing.

As an enterprise operation, P2P involves execution-level responsibilities within individual County departments/offices, as well as the core business groups. Therefore, any assessment of the existing control environment and associated risks for an enterprise operation must acknowledge that the control environment does not end at the core business groups, but extends out into the departments/offices which are executing the operation; in other words, an enterprise-wide control environment.

The P2P fraud risk assessment did not include detailed testing of internal controls. Rather, the intent of the fraud risk assessment was to inform senior management of high-level controls as they pertain to fraud and fraud management within the County's P2P operation, and to identify residual risk of fraud after existing controls have been considered.

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[1] The Procure-to-Pay Fraud Risk Assessment report, dated December 9, 2019, can be accessed from the County's website here: https://www.montgomerycountymd.gov/exec/Resources/Files/P2P_FRA_Report_12052019.pdf

P2P Fraud Risk Assessment Results

The fraud risk assessment of the County's P2P operation included Procurement Contracts (i.e., transactions that are subject to Chapter 11B of the County Code and Regulations, collectively referred to as "Procurement Regulations") and Agreements (i.e., transactions that are exempt from or not subject to the County's Procurement Regulations).[2] The fraud risk assessment focused on identifying fraud risks, not the risk of waste and abuse.

The fraud risk assessment was completed in December 2019. The results showed that while the County has a complex P2P operation, there appeared to be an established control environment with preventive and detective control activities designed to mitigate fraud risks. In addition, the County was actively working to further enhance its P2P control environment through various initiatives (e.g., the Risk Governance Committee; and the Financial, Analysis, Audit and Compliance Group within the Department of Finance). Further, the County has personnel in the core business groups that are focused on and committed to addressing inherent risks and residual risks.

Targeted Internal Control Reviews

The results of the P2P fraud risk assessment were used to develop a plan to execute detailed testing of internal controls and processes within the P2P operation. The targeted internal control reviews would examine specific transactions within selected departments/offices and to determine whether the controls are operating as designed. The purpose of the targeted internal control reviews is to provide a basis for management to determine whether the existing internal controls mitigate risk to an acceptable level and provide assurance of a sound control environment; as well as identifying instances where the controls should be strengthened to better mitigate risk.

The fraud risk assessment included limited procedures to determine if controls existed, based on interviews with County personnel and review of documentation. The following P2P operations were selected for further detailed testing of control design and/or operational effectiveness:
1. Needs assessment, solicitation, and contracting (collectively, contracting process review)
2. Receiving, invoicing, and payments (collectively, payment process review)
3. Vendor administration

This report represents the results of the contracting process review.

Contracting Process Review Background

Process Overview

The contracting process review focused on three sub-processes of the P2P operation:
1. Needs Assessment
2. Solicitation
3. Contracting

Each department/office (referred to as "department" in this report) is responsible for performing certain activities within each sub-process in conjunction with the Office of Procurement

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[2] Montgomery County Code, Chapter 11B can be accessed at the following website: http://library.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/chapter11bcontractsandprocurementnote?f=templates$fn=default.htm$3.0$vid=amlegal:montgomeryco_md_mc$anc. Montgomery County Regulations, Chapter 11B can be accessed from the following website: http://library.amlegal.com/nxt/gateway.dll/Maryland/comcor/chapter11bcontractsandprocurement-regula?f=templates$fn=default.htm$3.0

(Procurement). The Office of the County Attorney (OCA) is responsible for legal review of contracts and agreements which the County enters into including ensuring conformance with the County's Procurement Regulations.

Contracting Methods
The nature of the goods or services being acquired by the department determines the type of contracting method used which then determines the internal controls that are performed for each sub-process. The contracting methods are as follows:

1. 11B Procurement Contracts ("Procurement Contracts"): Authority to acquire goods, services, and construction under the County's Procurement Regulations has been delegated to the Procurement Director. 11B procurements result in Purchase Orders (POs) and Procurement Contracts.[3] The following types of Procurement Contracts are identified in the Procurement Regulations and were in-scope for this review:
    a. Invitation for Bid (IFB)
    b. Request for Proposal (RFP)
    c. Abbreviated Formal Solicitation
    d. Request for Expression of Interest
    e. Competitive Negotiation
    f. Open Solicitation
    g. Informal Solicitation: Mini Contract
    h. Informal Solicitation: Small Purchase
    i. Non-Competitive Procurement
    j. Public Entity Procurement
    k. Cooperative Procurements
    l. Bridge Contract
2. Non-11B Purchases ("Agreements"): Acquisition (or exchange) of goods, information, services, or real property interests by the County that are exempt from, or not subject to, the County's Procurement Regulations. There are two Non-11B purchase types; those that must comply with County's Administrative Procedure 2-4[4] (AP 2-4) and those that are exempt from AP 2-4.
    a. Subject to AP 2-4: These purchases result in a procurement-exempt agreement (Agreement). Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) were both within scope for this review. Other types of Agreements that are subject to AP 2-4, such as Lease and License Agreements, were not in scope for this review.
    b. Exempt from AP 2-4: These purchases (which include, by way of example, the acquisition of library materials, liquor for resale in the County, or investments in retirement funds) do not result in a Procurement Contract or an Agreement. These purchases are processed as Direct Purchase Orders (DPOs) or direct payments.[5] These purchases were not within scope for this review.

    Non-11B Purchases are not centrally owned by a specific department. Purchases that are subject to AP 2-4 are monitored by OCA if an Agreement is submitted to OCA for review. Purchases that are exempt from AP 2-4 are monitored by Finance when the

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[3] The exception for 11B Procurement methods are emergency procurements which result in a Direct Purchase Order (instead of a PO) and are not required to result in a Procurement Contract or Agreement.
[4] AP 2-4, *Agreements between Montgomery County Government and Other Organizations.* Issued August 14, 2019
[5] Procurement, OCA, and Finance developed a *Consolidated Exemptions List* which defines eligible purchase categories and corresponding requirements for each purchase that is not subject to or is exempt from Procurement Regulations. Since these purchases do not result in Procurement Contracts or Agreements, the purchase must follow DPO or direct payment requirements. A DPO is a department-issued PO that indicates to the vendor that the department has authorized the purchase of goods or services. DPOs greater than $10,000 must be approved by the Financial Analysis, Audit, and Compliance (FAAC) section of Finance before an invoice can be processed for payment. DPOs less than $10,000 are department-approved only. Direct payments do not require POs or DPOs.

department submits a payment request to ensure the purchase meets the exemption criteria. Procurement does not have any oversight responsibilities related to Non-11B Purchases.

For additional information and requirements for each in-scope11B Procurement and Non-11B purchase method, see *Appendix A: Procurement and Purchase Methods.*

<u>Systems</u>
The County relies on multiple systems for processing and inventorying Procurement Contracts and Agreements, including:
1. Oracle: The County's third-party ERP software. The scope of this review is limited to the Procurement module within Oracle. Both departments and Procurement have role-based access to the Oracle Procurement module.
2. Your Online Database Application (YODA): Procurement's centralized database program that provides a customizable dashboard to improve the communication and completion of key tasks/milestones for certain 11B Procurement Contract methods. YODA is currently available to Procurement employees, and certain functions are accessible to departments (e.g., department contract activity table).
3. Procurement Contracts Database: A central repository of all Procurement Contracts, attachments, and amendments maintained by Procurement. Procurement is able to upload documents and departments have read-only access to view documents.
4. OCA Agreements Database: A central repository for Agreements maintained in the County's Zy Imaging application (Zy) by OCA. OCA is able to upload documents and certain Finance employees have read-only access to view documents.

Process Summaries: Procurement Contracts
A high-level overview of the needs assessment, solicitation, and contracting sub-processes for Procurement Contracts follows.

<u>Needs Assessment Sub-Process Summary</u>
The needs assessment sub-process begins with the department identifying the need for goods, services, or construction and verifying they have adequate budget funds available. The department evaluates several factors to determine the procurement source selection method, with consultation from Procurement, that best fits their needs such as the estimated dollar amount of the purchase, selection method (i.e., best value or lowest price), and/or the type of goods or services to be purchased. Based on the department's assessment of these factors, the department enters the requisition in Oracle. Oracle workflow routes the requisition to a department approver then to a Procurement Specialist.[6] The Procurement Specialist reviews the requisition and works with the department to ensure the appropriate solicitation method is selected.

<u>Solicitation Sub-Process Summary</u>
The department develops the required solicitation documentation. Each procurement method has different requirements, as described in *Appendix A: Procurement and Purchase Methods*. Procurement provides departments with checklists to assist in collecting the required documentation.[7] Once complete, the department submits the solicitation documentation to Procurement for review and approval. The Procurement Specialist works with the department to finalize the solicitation documentation prior to publicly posting. The solicitation

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[6] The National Institute of Governmental Purchasing (NIGP) commodity code is used by the County for efficiency and standardization. When departments enter the requisition, a NIGP commodity code must be entered. The commodity code is included in the requisition to a Procurement Specialist for approval. In Procurement, Procurement Specialists are assigned by commodities they support for all departments or services they support for assigned departments.
[7] Each procurement method has a unique checklist.

document is the County's request for offers that results in the submission of a solicitation response (e.g., bids, quotes, or proposals) by vendors.

Evaluation Criteria
Evaluation criteria are the standards, factors, or elements documented in the solicitation that define the basis by which the solicitation responses will be evaluated. Evaluation criteria are agreed upon between the department and Procurement prior to solicitation posting. Certain procurement methods have pre-established criteria. For example, IFBs are awarded to the lowest cost bidder. Other procurement methods, such as RFPs, have flexibility in how each response will be evaluated such as the potential vendor's qualifications, years of experience, proposed staffing, similar work performed, and/or price.

The solicitation process varies for each procurement method. However, the general process is as follows:
1. Procurement posts the solicitation to the County website for the required posting period (e.g., five business days for informal solicitations).
2. Procurement receives solicitation responses (based on procurement method) from vendors until the published closing date for receipt of responses. Proposals received after the closing date are rejected by Procurement and will not be given to the department.
3. Procurement provides the solicitation responses to the department for evaluation and recommended selection of a vendor(s).
4. The department evaluates the proposal against required and/or agreed upon criteria, as listed in the solicitation.
5. The department ranks the vendors by how well they meet the evaluation criteria.
6. The department makes the determination of responsibility for the top scoring vendor(s).[8]
7. The department communicates the recommended vendor, determination of responsibility, and any required supporting documentation/forms to Procurement for approval in a memorandum from the Department Director, or designee.
8. Procurement reviews the memorandum to ensure the department's evaluation was completed based on evaluation criteria as set forth in the solicitation document, the vendor scorings were accurate, and that the requirements for a valid Procurement Contract have been met.
9. If compliant, Procurement sends the department a memorandum agreeing with department's selection and giving the department permission to enter into contract negotiations.

Contracting Sub-Process Summary
The department enters into contract negotiations with the selected vendor(s) upon approval from Procurement. If necessary, the department may contact Procurement or OCA to assist with negotiations. The end result of contract negotiations is a department drafted contract that must be approved by the appropriate parties. Procurement Contracts generally follow two processes: pre-approved contract template or standard contract approval.

Pre-approval of the Contract
Invitation for bids (IFBs) and open solicitations typically have a pre-approved contract template that is included in the solicitation documentation and is signed by the vendor, Department Director (or designee), and Procurement Director (or designee). An OCA representative does not sign the pre-approved contract template as this contract type includes language that states, "This form has been approved as to form and legality by the Office of the County Attorney," or

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[8] The determination of responsibility is the process of evaluating a potential vendor's capability to satisfy the County's needs or requirements of each specific contract. Examples include reviewing vendor's references, reputation, past performance, and/or financial records.

similar language. Therefore, these contracts only go to OCA for approval if the vendor or the department requests changes to the pre-approved template and/or terms and conditions.

Standard Contract Approval
All other procurement methods follow a standard contract approval process based on Procurement Regulations and the County's Delegation of Authority matrix (described further under *Delegations of Authority* section below). The department drafted contract must obtain the following approvals:
1. An authorized agent of the vendor
2. OCA representative (i.e., a County attorney or paralegal)
3. Department Director, or designee
4. Procurement Director, or designee
5. Certain procurement methods or dollar values require additional approvals, such as:
   a. Contract Review Committee (e.g., required for any sole source procurement over $100,000)
   b. Chief Administrative Officer, or designee (e.g., to address a request by Procurement and/or departments for a waiver of certain Procurement Regulations).

Once all signatures have been obtained, the contract is considered executed. Procurement maintains a copy of the executed contract within a hard-copy contract file. The contract file includes the associated solicitation, responses, contract documentation, any amendments to the original contract, and interdepartmental communications (e.g., memoranda). The executed contract and all necessary attachments are scanned into the Procurement Contracts Database.[9]

Once executed, the requisition from the needs assessment sub-process is approved by Procurement and converted to a PO in Oracle. POs are issued against the contract number in Oracle.

Process Summaries: Agreements
A high-level overview of the needs assessment and contracting sub-processes for Agreements follows. The solicitation sub-process does not apply to Agreements.

Needs Assessment Sub-Process Summary
The department determines that their need cannot be met by a Procurement Contract based on previous similar Agreements or consultation with OCA and/or Procurement. Requisitions are not entered into Oracle for Agreements.

Solicitation Sub-Process Summary
There are no solicitation requirements for Agreements. The department determines the private or public agency that can meet their needs and completes all documentation and approvals required by the AP 2-4 Checklist, including the documentation of their determination of responsibility.

Contracting Sub-Process Summary
The department develops an MOU or an MOA to enter into an Agreement between the County (or a specific County department) and the vendor or public entity. The department works directly with OCA to develop, review, and approve the Agreement. The Agreement must be approved by the Department Director or designee (see *Delegation of Authority Matrix* section below*)*, and

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[9] Procurement specific documentation, such as memorandums, checklists, solicitation documentation, etc. is generally not stored in the Procurement Contracts Database and is maintained in the hard copy Procurement Contract files.

the County Administrator or designee. Certain MOUs/MOAs must also be approved by Finance. Approvals are obtained on the Transmittal Form – County Executive/Chief Administrative Officer (CAO) Action (CAO Transmittal Form) to ensure all required departments and approvals have been obtained. Once all approvals have been obtained, the Agreement is considered executed. The executed Agreement, and all necessary attachments are scanned into the OCA Agreements Database.

Finance's Consolidated Exemptions List provides departments with guidance to determine whether a Non-11B Purchase must record a DPO in Oracle. Otherwise, Non-11B Purchases are not recorded in Oracle until the department submits a payment request in the Oracle Accounts Payable module.

Delegations of Authority

Procurement Regulations define the required approvals for Procurement Contracts and AP 2-4 defines the required approvals for Agreements. Authority to execute a Procurement Contract is delegated to the Procurement Director, or designee. Authority to execute an Agreement rests with the County Executive or CAO; or may be designated to a designee. The County's *Delegation of Authority Matrix – Contracts and Agreements* (April 2019) defines the authorities that have been delegated to departments and establishes documentation retention requirements if those authorities are further re-delegated.

Additionally, Procurement has a delegation of authority table to streamline their day-to-day operations. This *Delegation of Signatory Authority Dollar Limits Table* documents the procurement method (e.g., informal or RFP) or the procurement action (e.g., authority to publicly post a contract award), and defines the authority by Procurement position (e.g., Procurement Director or Procurement Specialist I) and by dollar amount threshold.

Policy Guidance

Procurement is responsible for administering the procurement of goods and services that are subject to Procurement Regulations. This includes developing, maintaining, communicating, and enforcing the policies, procedures, and internal controls related to requisitions, solicitations, contract awards, contracts, contract amendments, and POs. 11B Procurement related guidance, forms, and templates are available on Procurement's intranet site.

AP 2-4 was developed by a cross-department workgroup to provide departments with guidance and internal controls for the development, approval, and execution of Agreements. Procurement Contract and Agreement guidance, forms, and templates are available on OCA's intranet site.

Procurement Guide

The Procurement Guide provides the Procurement Contract methods, policies, and practices to be utilized by departments to procure goods, services, or construction. [10] It should be used in conjunction with the Procurement Regulations. For each procurement method, the Procurement Guide provides the requirements, responsibilities, and procedures for both departments and Procurement.

AP 2-4

AP 2-4 documents the policies and procedures for the preparation, review, clearance, approval, and monitoring of Agreements. These Agreements must:
1. Be exempt from or not subject to Procurement Regulations, and
2. Require the disbursement of County funds or the receipt of funds by the County.

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[10] Office of Procurement, "Procurement Guide," updated April 2010.

AP 2-4 does not apply to Procurement Contracts, collective bargaining agreements, certain exempt transactions, and grants.[11] OCA is responsible for maintaining the database of Agreements executed under AP 2-4.

YODA – Standard Operating Procedures (SOP)
The YODA SOP documents the methods used to perform routine Procurement activities in YODA.[12] This document also provides a framework to help ensure quality and consistency of the data entered. Additionally, it serves to streamline processes and reduce time, errors, and duplication of effort amongst Procurement employees.

Scope and Methodology

The review was conducted from January 2020 to November 2020. The review focused on the current needs assessment, solicitation, and contracting sub-processes administered by Procurement for Procurement Contracts and by the County for Agreements. For testing purposes, SC&H reviewed:
1. Procurement Contracts: Controls performed by Procurement on Department of Health and Human Services (DHHS) and Department of Transportation (DOT) Procurement Contracts executed July 1, 2018 through December 31, 2019.
2. Agreements: Controls performed by OCA on MOUs/MOAs subject to the terms of AP 2-4 executed from January 1, 2020 through September 30, 2020 (referred to as the "extended review period").[13]

The following methods were not in-scope for this review:
1. Direct payments
2. Petty cash payments
3. Credit or debit card purchases
4. Employee reimbursements
5. Purchases exempt from AP 2-4

In order to achieve the objectives, SC&H performed the following procedures.

Scoping

Data Analytics and Department Selection: Procurement Contracts
SC&H worked with the Internal Audit (IA) Manager and Procurement to gain an understanding of the availability of data/reports for Procurement Contracts. SC&H requested and received Oracle reports listing all active Procurement Contracts (referred to as the contracts file) and PO Line Items (referred to as the PO file) for the period of July 1, 2018 through December 31, 2019. The contracts file included a count of Procurement Contracts by department but did not include the contract values. Therefore, SC&H utilized the PO file to calculate the amount encumbered for each PO line item for each department.

Table 1 summarizes the PO line item count and PO dollar amount encumbered by department for the top ten County departments, sorted by highest dollar amount. A PO encumbers funds,

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[11] Purchases that are exempt from or not subject to Procurement Regulations are documented on the *Consolidated Exemptions List,* which defines whether the purchase is subject to AP 2-4 requirements.
[12] Office of Procurement, "YODA - Standard Operating Procedures," updated February 2019.
[13] AP 2-4 was finalized on August 14, 2019. As such, there were not any MOUs/MOAs that were subject to requirements of AP 2-4 for the period that fell in-scope for the review period (i.e., August 14, 2019 through December 31, 2019). Therefore, SC&H expanded our review period for the testing of Agreements only. Additionally, to ensure adequate sample size, SC&H expanded our population from DHHS and DOT to all County departments.

which means the PO dollar amount encumbered is restricted/reserved for the respective vendor based on the Procurement Contract.

Rank	County Department Abbreviation from PO File	PO Line Item Count (See Note 4)	PO Dollar Amount Encumbered	% of PO Dollar Amount Encumbered
1	Transportation	2,571	$ 389,026,281	28%
2	Health and Human Services	2,882	233,613,148	17%
3	Environmental Protection	585	192,680,630	14%
4	General Services	1,731	178,412,578	13%
5	Non-Departmental Accounts (See Note 1 below)	686	81,418,799	6%
6	Not Defined (See Note 1 below)	599	75,783,611	5%
7	Technology Services	605	63,968,004	4%
8	Police	587	44,151,961	3%
9	Fire and Rescue Service	644	24,522,920	2%
10	Housing and Community Affairs	254	21,169,271	2%
11	All Other County Departments (See Note 2 below)	3,118	85,325,043	6%
	Total	**14,262**	**$ 1,390,072,246**	**100%**

Note 1: Non-Departmental Accounts and Not Defined represent POs that were not recorded to a specific department as they are attributable to County-wide efforts or programs. These transactions were evaluated during the payments process review (the subject of a separate report published on April 14, 2021) and were not evaluated during the contracting process review.

Note 2: The remaining 34 County departments from the PO file were aggregated for presentation purposes.

Note 3: The PO line item count and PO dollar amount encumbered represent totals for the period of July 1, 2018 through December 31, 2019 for 11B procurement only.

Note 4: These counts and dollar amount represent POs only and do not represent DPOs or direct purchases. A PO could have one line item or multiple line items. Therefore, the PO line item count is not representative of the total number of POs.

Table 1: PO Dollar Amount Encumbered by County Department (based on SC&H analysis of PO file data)

After reviewing the total payment amount and types of transactions by department, DOT and DHHS were selected for review in the fieldwork phase.

Department Selection: Agreements
Data analytics were not performed for the in-scope Agreements. OCA communicated that no MOUs/MOAs executed in accordance with AP 2-4 had been recorded in the OCA Agreements Database from August 14, 2019 (the date AP 2-4 was implemented) through December 31, 2019 (last day of the review period). Therefore, MCIA and SC&H agreed to extend the review period for Agreements and re-evaluate the existence of Agreements during fieldwork procedures.

Test Plan Development
Following the data analytical procedures and agreeing upon the department selection, a test plan was created to test the design and/or operational effectiveness of internal controls identified during the P2P fraud risk assessment.

Fieldwork

Fieldwork consisted of performing additional data analytics, documentation review, and testing the design and/or operational effectiveness of internal controls identified during the P2P fraud risk assessment.

Sample Selection
Each contracting method followed a different sample selection process.

Procurement Contracts
Twenty-five (25) contracts from each in-scope department were initially selected for review. The sample was reduced to eight of the most frequently used procurement methods for each department due to limited staff that were physically present in Procurement's office to compile contract documentation from the hard-copy contract files due to the work from home restrictions related to COVID-19. Therefore, 16 total samples were selected for review.

The following *Table 2* provides the procurement methods selected for each department.

11B Procurement Method	DHHS	DOT
RFP	X	X
IFB	X	X
Open Solicitation	X	X
Public Entity Procurement	X	X
Cooperative Procurement		X
Non-Competitive Procurement	X	X
Bridge Contract	X	X
Abbreviated RFP	X	
Informal Solicitation - Mini Contract	X	X

Table 2: Procurement Contract Methods Selected by Department

Agreements
The OCA Agreements Database included eight MOUs and MOAs during the extended review period of January 1, 2020 through September 30, 2020. Four of the 8 MOUs/MOAs involved the receipt or disbursement of County funds and, therefore, were tested for compliance with AP 2-4.

Documentation Review
SC&H obtained and reviewed the Procurement Regulations, the Procurement Guide, YODA SOPs, and AP 2-4 to confirm our understanding of the internal controls for each sub-process. Additionally, we reviewed standard contract templates and the general terms and conditions for contracts from OCA's intranet site. Based on the procurement methods selected for testing, we also reviewed the corresponding procurement forms.

Walkthroughs
Additional walkthroughs were performed with Procurement and OCA to obtain a more thorough understanding of each sub-process to evaluate the effectiveness of internal controls, workflow between Procurement and/or OCA and the departments, and documentation management systems and databases.

Internal Controls Testing
Internal controls identified during the fraud risk assessment were tested to assess the operating effectiveness of the control activity. SC&H prepared a document request list for all information needed to satisfy the testing steps developed in the test plan.

1. Procurement Contracts: For each contract selected, SC&H obtained the supporting documentation to evaluate the appropriateness of the procurement method used, vendor evaluation and selection, and review and approval of contract documentation for compliance with Procurement Regulations.
2. Agreements: For each Agreement selected, SC&H obtained the supporting documentation to evaluate compliance with AP 2-4 requirements.

Validation
1. Procurement Contracts: The preliminary test results were compiled and presented to Procurement on October 23, 2020. Procurement provided feedback and support that was reviewed to update and finalize test results. Additional procedures were performed, and preliminary observations were presented to Procurement on November 16, 2020.
2. Agreements: The preliminary results and observations were compiled and presented to OCA on November 10, 2020 for review and discussion. OCA provided feedback and support that was reviewed to update and finalize testing results.

Data and Fieldwork Limitations
The following limitations impacted fieldwork. These limitations were communicated to Procurement throughout the review.
1. **COVID-19 Restrictions:** This review occurred during a period that the County was on mandatory work from home restrictions due to the COVID-19 pandemic. As mentioned in the *Contracting Process Review Background* section of this report, solicitation documentation was maintained in hard copy for the majority of procurements executed during the review period. As such, SC&H was not able to access or review contract files and relied on Procurement to provide required documentation. As a result, we could not conclude on the completeness or organization of the contract files. See *Procurement Finding 2.2* for additional information.

2. **Oracle Access:** Due to enhanced workload associated with COVID-19 related requests, Procurement requested that SC&H obtain Oracle inquiry access and view-only access to the Procurement's Contracts Database to directly obtain certain documentation, such as Oracle screenshots and scanned contracts. SC&H was granted inquiry access and was able to obtain the required screen shots related to requisition approval. However, SC&H could not access copies of the completed requisitions submitted by the departments or final approved POs. Instead, screenshots of the approved purchase order information were obtained from Oracle.

3. **Data Integrity:** The PO file contained data fields that were sometimes blank. In some instances, purchase order or agreement numbers were not included for specific transactions and required follow-up and/or investigation by Procurement to determine the correct procurement. A weekly, scheduled maintenance process to reconcile/clean-up the data was developed prior to this review. However, the review period and therefore the PO file, contained transactions from prior to the start of the weekly scheduled maintenance process.

4. **Procurement Contracts Database:** SC&H was unable to obtain the contract documentation for several contracts within the Procurement Contracts Database. As a result, additional requests from Procurement were required in order to obtain the final contract documentation. Further, the data used to select contracts for testing did not include the execution date of the contract, rather the data included the date of the most recent amendment/contract action. As such, some contracts selected for testing were dated and required documentation to be pulled from archives.

5. **OCA Agreements Database:** SC&H could only view MOUs and MOAs that were scanned into the OCA Agreements Database. If a document was not submitted to OCA for approval or if OCA did not scan the final documents into the OCA Agreements Database, SC&H would not have been able to view or select the MOU or MOA. There were no procedures performed to determine completeness of the listing.

Findings and Recommendations

Results

<u>Procurement Contracts</u>
The P2P operation for Procurement Contracts appears to contain an established control environment with preventive and detective control activities designed to mitigate fraud risks. Based on the test procedures performed for a sample of transactions, no control deficiencies were identified. All Procurement Contract test samples included appropriate signatures evidencing what appeared to be proper approval of both solicitation and contract documentation. Further, based on the test procedures performed, several samples had delegations of authority that were properly supported and maintained by Procurement in compliance with the *Delegations of Authority Matrix*.

As the control environment appears to be operating effectively for Procurement Contracts, the two observations identified are designed to improve efficiency and transparency of the processes.

<u>Agreements</u>
AP 2-4 was developed by a workgroup of multiple County departments. Its intent was to mitigate risks and provide standard processes and internal controls for Agreements that were not formally or centrally monitored by the County. However, while AP 2-4 designates specific departments and offices within the County as being responsible for individual internal control activities, there is no single department or office, similar to the Office of Procurement for Procurement Contracts, with overall responsibility for administration of the Agreements' internal control environment.

OCA acknowledged their responsibility to maintain an inventory of Agreements and to review Agreements for form and legality. We found that OCA was maintaining an inventory of Agreements and that all Agreement test samples included Chief Administrative Officer, OCA, and department signatures evidencing what appeared to be proper approval of Agreements.

OCA performs a unique "gate-keeper" oversight role with respect to the control environment for Agreements, because of the requirement that OCA review all Agreements for form and legality prior to Agreements being executed. This requirement allows OCA to ensure that all requirements – both legal and as prescribed under AP 2-4 – have been met and appropriately documented prior to signing of on the Agreement. No other department or office is authorized to perform this role, or situated in the process established in AP 2-4. Therefore, the two findings identified to strengthen compliance with the processes and responsibilities established under AP 2-4 and the control environment for Agreements are directed to OCA.

Procurement Findings and Recommendations

Procurement Finding 1: Outdated Procurement Guide

The current version of the Procurement Guide has not been updated since April 2010.

Procurement agreed that the Procurement Guide was outdated. However, as of the time of this review Procurement stated that they are currently in the process of updating the Procurement Guide. These updates are currently being reviewed and finalized.

SC&H identified three areas where the Procurement Guide could be improved:
1. Outdated system references
2. Improve and align procedural guidance
3. Lack of centralized guidance for Non-11B purchases

1.1 Outdated System References
The current Procurement Guide references previous systems that are no longer in use (i.e., Advanced Purchasing and Inventory Control System (ADPICS) and Financial Administration and Management Information System (FAMIS)), and does not include references to the current systems used (i.e., Oracle and YODA). Additionally, the final step of the contracting process is to save documentation to the Procurement Contracts Database. However, there is no cross-reference to the Procurement Contracts Database to provide instructions for how departments can access or search for contracts.

1.2 Improve and Align Procedural Guidance
The current Procurement Guide states that the purpose is to supplement the Procurement Regulations and that it is intended to be a general guide that may not answer all departmental questions. However, the Procurement Regulations are more detailed than the Procurement Guide and/or the Procurement Guide could be more precise. The following two examples provide evidence of inconsistently and/or inadequately documented procedures:
1. Inconsistent guidance: The Procurement Regulations contains requirements that are not documented in the Procurement Guide.

    For example, for the mini-contract informal solicitation procurement method requires a minimum number of vendors to be contacted, including five vendors randomly selected by Procurement. Of those five vendors:
    a. One vendor must be a minority owned business.
    b. One vendor must be the previous vendor that provided the services, goods, or construction, if applicable.
    The requirement for the previous vendor to be contacted is not mentioned in the Procurement Guide and is included in the Procurement Regulations.

2. Inadequate procedural guidance: The current guidance does not reflect current practices/requirements.

    For example, each procurement method has a corresponding checklist to assist departments in performing required steps and collecting appropriate supporting documentation. However, the form/checklist name or number is not referenced within the procedural steps for each procurement method in the Procurement Guide. Additionally, the checklist to be performed by the Procurement Specialists is not documented in the Procurement Guide.

1.3 Lack of Centralized Guidance for Agreements

Understanding the various contracting methods and exemptions currently requires referencing policies and procedures maintained independently by three departments; Procurement, OCA, and Finance. There is no overview of all contracting methods and exemptions for Procurement and Agreements that provides guidance to departments or references the responsible party and corresponding policies and procedures.

Risks

Lack of accurate and complete guidance could result in inefficient or ineffective procurement activities and/or non-compliance with Procurement Regulations or other County requirements (e.g., policies).

Procurement Recommendation 1.1

Procurement should complete their updates, reviews, and approvals of the Procurement Guide to reflect current practices, systems, and requirements (e.g., forms and checklists).

Additionally, Procurement should consider including Input from OCA and Finance to provide guidance and/or cross-references to the policy and procedural documentation for Agreements. For example, clearly defining examples of Agreements and linking to OCA and/or Finance policies and procedures could assist departments in decision-making and planning.

Procurement Finding 2: Manual processes and decentralized workpaper maintenance practices

The following inefficiencies related to 11B Procurement practices were identified:
1. Limited automation
2. Procurement documentation/evidence

2.1 Limited Automation

In fiscal year 2019, Procurement executed over 8,800 procurement actions totaling over $1 billion while not having a centralized system for automated workflow.[14] Procurement utilizes YODA to automate portions of the solicitation sub-process. Currently, YODA is used to perform multiple tasks, including but not limited to the following:
1. Track solicitations for the following procurement methods:
    a. Formal Solicitations (i.e., RFP, IFB, REOI)
    b. Informal Solicitations (i.e., Mini-Contracts, Small Purchases)
    c. Open Solicitations
2. Track the following procurement steps:
    a. Public posting of solicitations
    b. Public posting of the Notice of Award
    c. Cancellation of solicitations

Within YODA, solicitation milestones are manually input and tracked to ensure timely completion of tasks. However, solicitations are developed outside of YODA and communicated between the departments and Procurement via email. Once final, the completed solicitation is publicly posted through YODA. Then, the following actions are manually completed outside of YODA:
1. Vendor responses are received.
2. Vendor responses are evaluated.

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[14] Office of Procurement, "Record of Procurements, FY2019, July 1, 2018 through June 30, 2019." Accessed from: https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/FY19RecPRO.pdf

3. A vendor is selected based on evaluation criteria.
4. The department provides a recommendation package to Procurement, which includes a memorandum with the recommended vendor and statement certifying the responsibility and responsiveness of the vendor. However, they do not provide evidence validating their assessment of the vendor.
5. Procurement-related checklists and memorandums are created, submitted, reviewed, and approved.
6. Notice of Award documentation is generated.

Following the above actions, the final approved Notice of Award is publicly posted through YODA.

Contracts documents are also drafted outside of YODA and Oracle and emailed between departments. Once executed, the final contract is uploaded to the Procurement Contracts Database.

While YODA provides transparency for the above procurement methods and steps, it still requires the performance of multiple manual steps. Additionally, the Procurement methods and steps that are not processed in YODA rely on manual controls for documentation review and approval. Further, YODA and Oracle do not interface to allow for any workflow/automation. This results in procurement actions being performed in both YODA and Oracle, as well as outside of both systems.

2.2 Procurement Documentation/Evidence
All relevant Procurement Contract records are not maintained in a centralized or electronic form; and can be located in multiple locations and formats which could impact accessibility, transparency, and completeness. The following provides instances where documentation is maintained in multiple locations and formats:

1. Certain procurement methods and certain procurement process steps are:
   a. Performed in YODA.
   b. Performed manually outside of YODA.
2. Requisition and PO creation and approval is performed in Oracle. Final POs are maintained in Oracle and a copy is emailed to departments.
3. Executed contracts and amendments and/or modifications are maintained in Procurement's Contract Database.
4. Hard-copy contract files are maintained to evidence required procedural documentation, such as solicitation documentation, checklists, memorandums, interdepartmental communications, etc.
5. Delegations of Authority are maintained in email or internal shared folders.

Risks
The following risks were identified:
1. Reliance on manual processes and controls could result in ineffective or inefficient review of solicitation and contract documentation and/or non-compliance with Procurement Regulations.
2. Lack of automation could result in increased time/effort or the waste/abuse of County resources to perform routine procurement activities.
3. Lack of accessibility and transparency into procurement documentation and processes could result in opportunities to manipulate data/reporting and an inability to prevent/detect fraud, waste, or abuse.

Procurement Recommendation 2.1
Procurement should evaluate opportunities to automate the Procurement Contract process, to the extent practical, within one system. This could require further investment into current systems, such as Oracle, or evaluating new systems/applications that can replace/integrate with YODA and Oracle.

The use of a single, centralized system could reduce the need for manual processes and result in a single location for all procurement and contract related documentation. Additionally, once implemented, automation could reduce the workload and improve transparency for 11B procurements.

OCA Finding and Recommendations

OCA Finding 1: Instances of non-compliance with AP 2-4

AP 2-4 was developed to establish policies and procedures for the preparation, review, clearance, approval, and monitoring of Agreements. Further, AP 2-4 governs Agreements that are not subject to Procurement Regulations and that require either the disbursement of County funds or receipt of funds by the County.

Two areas of non-compliance with AP 2-4 were identified:
1. Missing inventory listing requirements
2. Missing supporting documentation

1.1 Missing Inventory Listing Requirements
AP 2-4 requires that OCA maintain an inventory of all Agreements, which are stored in the OCA Agreements Database. The OCA Agreements Database provides fields that correspond to the Agreement, and also contains a linked .pdf version of the executed Agreement and supporting documentation. Four of the six inventory requirements listed in AP 2-4 *Section 6.0.C*, were not included in the OCA Agreements Database, as follows:
1. The total estimated amount of County funds to be disbursed over the Agreement period, or the total estimated amount of funds to be received by the County over the Agreement period as stated by the responsible department.
2. Indication of whether the agreement involves receipt of funds by the County or the contractor/subcontractor on the County's behalf.
3. Indication of whether the agreement involves advanced payment of funds by the County.
4. Date of signature by CAO (or another authorized County official).[15]

Additionally, SC&H could not determine whether a scanned Agreement was subject to AP 2-4 as defined under *Section 2.1*. Further, Certain MOU/MOAs are required to meet the provisions of AP 2-4 *Section 8.0 - Required Agreement Provisions.* Other agreements, such as lease and license agreements, are not subject to *Section 8.0* and fall under *Section 8.2 - Exclusions from Required Agreement Provisions.* The inventory does not contain an indicator of whether an Agreement is subject to *Section 8.0* or *Section 8.2*.

When presented with this finding, OCA acknowledged these four items were not included in an inventory but that each item was available within the scanned documents. However, this

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[15] SC&H noted that there are two dates columns within the OCA Agreements Database: date entered and date filed. However, neither of these dates corresponded to the date the CAO signed the MOA/MOU.

does not appear to be in compliance with OCA's requirement to maintain these items within their inventory of Agreements as stated in AP 2-4.

1.2 Missing Supporting Documentation
OCA is responsible for administering AP 2-4 and maintaining the inventory of Agreements, which is maintained in the OCA Agreements Database. AP 2-4 *Section 6.0* requires OCA to review all proposed Agreements for form and legality. As such, OCA is responsible for ensuring Agreements and supporting documentation required under AP 2-4 is obtained from departments, reviewed, and maintained.

AP 2-4 provides the following requirements to be submitted to OCA with the Agreement:
1. Section 7.3: Requires the department to, "Submit the proposed Agreement, along with all other relevant documentation, to include the determination of responsibility, checklist, and approvals received from the other County departments to OCA."
2. Section 8.0: Requires the Agreement to have various elements, "in addition to the AP 2-4 General Conditions."
3. Section 6.1.D: Requires the department to, "Conduct and document an analysis that the Contractor is capable of fulfilling the requirements under the Agreement." It further provides minimum requirements that should be addressed, such as:
    a. Ability, capacity, organization, facilities, systems and skills of the Contractor to fulfil the requirements.
    b. Integrity, reputation, and experience of the Contractor and key personnel including previous performance.
    c. Previous and existing compliance with laws, regulations, and ordinances by the Contractor.

The following exceptions to the above AP 2-4 requirements were identified:
1. For four of four selected samples, the AP 2-4 Checklist, determination of responsibility, and AP 2-4 General Terms and Conditions were not scanned into the OCA Agreements Database.
2. Two of the four samples missing documentation within the OCA Agreements Database were further evaluated for evidence of documentation existence outside of the database. This procedure was performed to determine if the exception was limited to where the information was stored.
    a. For one of the two selected samples, the AP 2-4 Checklist, determination of responsibility, and AP 2-4 General Terms and Conditions associated with the MOUs/MOAs selected was not provided.
    b. For the one AP 2-4 Checklist provided, the determination of responsibility was check-marked with no additional documentation despite minimum requirements documented in AP 2-4 Section 6.1.D.

Due to these exceptions, SC&H was unable to verify if AP 2-4 Checklist, AP 2-4 General Terms and Conditions, and determination of responsibility applied, were consistently obtained, and/or reviewed by OCA.

1.3 Transmittal Forms
The CAO Transmittal Forms were not consistently scanned into the OCA Agreements Database. The CAO Transmittal Form, while not a specific requirement of AP 2-4, often contains signature evidence of additional reviews that are required per AP 2-4. For example, Finance and/or OMB may have to review an Agreement if it meets certain requirements (e.g., advance payments), but Finance and/or OMB would not be required to physically sign that Agreement or formally document review and approval. Therefore, if the CAO Transmittal Form was missing, SC&H was unable to determine if required reviews occurred.

Risks

SC&H identified the following risks:
1. Lack of required inventory elements could result in an inability to identify Agreements that must comply with AP 2-4, potentially resulting in non-compliance.
2. Lack of required supporting documentation could result in the approval of inaccurate, incomplete, or inappropriate Agreements.

OCA Recommendation 1.1

Per Finding 1.1 above, OCA should add the remaining four of the six data fields required by AP 2-4 Section 6.0.C to the OCA Agreements Database. The fields should be populated for each Agreement. Further, OCA should develop guidelines for completing the OCA Agreements Database to consistently capture data elements, such as date fields and contract type.

Also, OCA should consider adding a field to the OCA Agreements Database to capture whether:
1. An Agreement is subject to *Section 8.0* or is excluded per AP 2-4 *Section 8.2*.
2. Provisions of AP 2-4 *Section 8.0* were not applicable for a specific Agreement.

OCA Recommendation 1.2

Per Finding 1.2 above, OCA should consider developing an Agreement Scanning Checklist to ensure:
1. Departments submit accurate and complete documentation to support Agreements, as required by AP 2-4 (e.g., the determination of responsibility requirements).
2. Agreements and required supporting documentation are accurately and completely scanned and maintained in the OCA Agreements Database.
3. Required data fields are accurately and consistently populated in the OCA Agreements Database.

Comments and MCIA Evaluation

We provided the Office of Procurement and the Office of the County Attorney with a draft of this report for review and comment. Procurement responded with comments on May 25, 2021, and OCA responded with comments on June 23, 2021. Their responses have been incorporated in the report at Appendices B and C, respectively. Both offices stated that they have taken steps already to make enhancements in their processes, consistent with the recommendations contained in the report; and will take appropriate actions to build on the actions taken and to address their respective recommendations. No changes have been made in the report based on the responses.

Appendix A - Procurement and Purchase Methods

11B Procurement Method Overview

Departments have the following procurement methods available to make a purchase in compliance with the Procurement Regulations:
1. Invitation for Bid (IFB)
2. Request for Proposal (RFP)
3. Abbreviated Formal Solicitation
4. Request for Expression of Interest (REOI)
5. Competitive Negotiation
6. Open Solicitation
7. Informal Solicitation: Mini Contract
8. Informal Solicitation: Small Purchase
9. Non-Competitive Procurement
10. Public Entity Procurement
11. Cooperative Procurement

The following provides a summary of the use/purpose, approvals, and dollar thresholds for each procurement method per the Procurement Regulations. For details related to the types of procurements selected for this review, refer to the *Scope and Methodology* section.

1. **IFB**
   - Use/Purpose: An IFB is a formal solicitation for competitive bids awarded to the lowest responsible, and responsive bidder. IFBs are typically used when a procurement is for goods, non-professional services, or construction valued at $100,000 or more. Proposals are received from vendors and evaluated by members of the department based on a set of pre-determined criteria. Upon selection of the lowest cost, responsible, and responsive vendor, the original solicitation document is signed and becomes the final executed contract. OCA has pre-approved a contract template for IFBs and is not required to sign the final contract document unless substantial changes to the general terms and conditions are made.
   - Approvals: Procurement approves the department's use of an IFB.
   - Dollar Thresholds: This procurement type is usually a minimum dollar value of at least $100,000 and does not reference a maximum dollar value.

2. **RFP**
   - Use/Purpose: An RFP is a formal solicitation for competitive sealed bids for goods, professional services, or construction valued at $100,000 or more. Proposals are received and evaluated by a Qualification and Selection Committee (QSC) comprised of members of the department procuring the goods/services. Evaluation criteria are established and utilized to identify the vendor that will provide the best value to the County. The department makes an award recommendation to Procurement and the final selection of a vendor is approved by Procurement. The department drafts the final contract document with assistance from Procurement and OCA, as needed, and executes the contract with the vendor.
   - Approvals: Procurement approves the department's use of an RFP.
   - Dollar Thresholds: This procurement type is usually a minimum dollar value of at least $100,000 and does not reference a maximum dollar value.

3. **Abbreviated Formal Solicitation**
   - Use/Purpose: An abbreviated formal solicitation is a method for obtaining competitive sealed bids or competitive sealed proposals by using an abbreviated formal solicitation

process. The abbreviated formal solicitation is used when it is in the best interest of the County and the procurement value, including extensions, is $200,000 or less. This method is a variation of either the IFB or RFP process.

- o IFB: If used as a variation on the IFB process, Procurement will issue notice of the IFB to at least 25 randomly selected potential bidders on the bidder's listing or the entire list, whichever is smaller. Procurement can also issue notice to additional potential bidders, when at least 20%, if available, should be minority owned businesses. Additionally, the previous supplier of the goods, services, or construction being acquired should also receive notice of the IFB. The IFB should allow a bidder a minimum of 10 days to submit a bid.
- o RFP: If used as a variation of the RFP process, Procurement will issue notice of the RFP to at least 25 randomly selected potential bidders on the bidder's listing or the entire list, whichever is smaller. Procurement can also issue notice to additional potential bidders, when at least 20%, if available, should be minority owned businesses. Additionally, the previous contractor of the goods, services, or construction being acquired should also receive notice of the RFP. The RFP should allow a bidder a minimum of 10 days to submit a proposal.

- Approvals: Procurement approves the department's use of an abbreviated formal solicitation (IFB or RFP).
- Dollar Thresholds: This procurement type has a minimum dollar value of at least $10,000 and a maximum dollar value of $200,000.[16]

4. **REOI**
   - Use/Purpose: An REOI is a formal solicitation for competitive sealed responses containing qualifications and other requested information from prospective sources of the County's requirements. An REOI is initiated to obtain essential procurement information needed to prepare a subsequent solicitation. The purpose of an REOI is to develop a ready source of potential offerors who can respond within a short time frame to the subsequent solicitation. Evaluation criteria for REOIs should not normally include cost factors. If oral interviews are contemplated, the objective criteria for when, how, and which respondents are eligible must be specified. An explanation of point scoring must also be included (e.g., the relationship between written submissions and oral interview evaluations). For purposes of subsequent solicitations, there is no ranking within the shortlist, and all firms contained on the shortlist are to be considered of equal merit. A shortlist established by an REOI constitutes the exclusive pool of prospective offerors for future solicitations specified in the REOI. Procurement may authorize the department to negotiate a contract with a responding firm without subsequent solicitation if only one firm responds to the REOI.
   - Approvals: Procurement approves the department's use of an REOI.
   - Dollar Thresholds: This procurement type does not reference a minimum or maximum dollar value.

5. **Competitive Negotiation**
   - Use/Purpose: A competitive negotiation is a procurement method which may take place only after an IFB or RFP has failed to produce acceptable bids or proposals and only after a determination and finding memorandum has been documented by Procurement stating that further competitive bidding would be impractical and not in the best interest of the County. It is an attempt to negotiate a contract to meet, as nearly as possible, the County's requirements. Procurement must notify, by public listing, the County's intent to negotiate a contract under this method. Competitive negotiations occur when:

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[16] However, if the value is greater than $10,000 but less than $100,000 an informal solicitation would generally be used.

- No timely bids or proposals are received or only one timely bid is received. Negotiations may take place concurrently with all those solicited who indicate a desire to participate in the negotiations, after notice by public posting and other informal communications inviting participation deemed appropriate by Procurement.
- Bids or proposals are received but do not meet requirements. Negotiations may be held with the bidder or proposer who most nearly complies with the County's requirements (including price) to attempt to reach and negotiate an acceptable offer. If negotiations fail with the most qualified bidder or proposer, negotiations may proceed to the next most qualified bidder or proposer, with approval from Procurement.
- Approvals: Procurement approves the use of competitive negotiations.
- Dollar Thresholds: This procurement type does not reference a minimum or maximum dollar value.

6. **Open Solicitation**
   - Use/Purpose: Open solicitations are publicly posted to the County's website by Procurement. Applications are accepted on a continuing basis from potential vendors and contracts are rewarded to those who meet a pre-defined set of qualifications outlined in the solicitation. Examples of situations in which an open solicitation may be best utilized include, but are not limited to, obtaining instructors for various training/teaching programs or obtaining vendors to assist with County-wide snow removal. Open solicitations utilize a pre-approved form contract which each successful contractor will be required to execute and ensures that the cost of all contracts entered under the open solicitation will not exceed the available appropriated funds. Therefore, OCA is not required to sign the final contract document unless substantial changes to the general terms and conditions are made.
   - Approvals: Procurement approves the department's use of an open solicitation.
   - Dollar Thresholds: This procurement type does not reference a minimum or maximum dollar value.

7. **Informal Solicitation (Mini-Contract)**
   - Use/Purpose: An informal solicitation (mini-contract) is a contract for professional and, under special circumstances, non-professional services valued above $10,000 and under $100,000. Each informal solicitation (mini-contract) notice must be posted on the County's website. The department will give a list of five randomly selected potential offerors from the bidder's list or the entire list, whichever is smaller. At least one vendor must be a minority owned business and one vendor must be a previous supplier of the goods, services, or construction, if applicable. The solicitation process requires, at a minimum, a documented oral or written contact with prospective offerors, documentation of efforts to contact a minority owned business, and documentation of the results of that contact. The department determines the basis of award and enters into a contract with the vendor who provides the best value to the County. An informal solicitation (mini-contract) is not subject to renewal or amendment for the purpose of increasing its value beyond the maximum limit.
   - Approvals: Procurement approves the department's use of an informal solicitation (mini-contract).
   - Dollar Thresholds: This procurement type has a minimum dollar value of above $10,000 and under $100,000.

8. **Informal Solicitation(Small Purchase)**
    - Use/Purpose: An informal solicitation (small purchase) is an informal solicitation for goods, construction, or services valued above $10,000 and under $100,000. The informal solicitation (small purchase) is a solicitation initiated by the department, which is responsible for ensuring appropriate informal competition and appropriate documentation. This procurement method should preserve competition on an informal basis and an award must be based on price, responsiveness, and responsibility. The department must contact at least five randomly selected potential offerors selected from the bidder's list or all potential offerors from the bidder's list whichever is smaller. Each informal solicitation notice must be posted on the County's website.
    - Approvals: Procurement approves the department's use of informal solicitation (small purchase).
    - Dollar Thresholds: This procurement type has a minimum dollar value of above $10,000 and under $100,000.

9. **Non-Competitive Procurement**
    - Use/Purpose: A non-competitive procurement is a purchase by Procurement Contract without prior public notice, without public posting of a solicitation document, and without competition of vendors. The department must document their explanation and justification for a non-competitive procurement in a memorandum and provide it to Procurement for review.
    - Approvals: Procurement can approve a non-competitive award up to $100,000 unless the non-competitive award is based on a sole source justification and the estimated value of the award is above $100,000 (e.g., if only one vendor could provide a specific service). If the estimated value of the non-competitive award is based on a sole source justification or it exceeds $100,000, the CRC must approve the contract award.
    - Dollar Thresholds: This procurement type does not reference a minimum or maximum dollar value.

10. **Public Entity Procurement**
    - Use/Purpose: A public entity procurement is an agreement to acquire or use any goods, services, or construction with a public entity upon terms and conditions considered to be in the best interest of the County as determined by Procurement. A public entity procurement does not require public solicitation, nor does it require justification as a non-competitive procurement. The County may work in conjunction with other public entities to enter into a cooperative procurement with a selected vendor. If multiple public entities are seeking similar goods, services, or construction, one public entity can competitively solicit and select the best vendor, who will enter into contracts with each of the public entities participating in the cooperative procurement. If the County is performing the procurement process, the solicitation will be issued in line with the County's Procurement Regulations. Alternatively, if another public entity leads the procurement, the other public entity would utilize its own solicitation procedures to select a vendor. However, regardless of which public entity performs the solicitation and selects the best vendor, each public entity negotiates their own contract with the selected vendor.
    - Approvals: Procurement must approve the use of a public entity procurement.
    - Dollar Thresholds: This procurement type does not reference a minimum or maximum dollar value.

11. **Cooperative Procurement**
    - Use/Purpose: The County may work in conjunction with other public entities to enter into a cooperative procurement with a selected vendor. If multiple public entities are seeking similar goods, services, or construction, one public entity can competitively solicit and

select the best vendor, who will enter into contracts with each of the public entities participating in the cooperative procurement. If the County is performing the procurement process, the solicitation will be issued in line with the County's Procurement Regulations. Alternatively, if another public entity leads the procurement, the other public entity would utilize its own solicitation procedures to select a vendor. However, regardless of which public entity performs the solicitation and selects the best vendor, each public entity negotiates their own contract with the selected vendor.

- Approvals: Procurement must approve the use of a cooperative procurement.
- Dollar Thresholds: Follows the Solicitation threshold established by the County if the County is the lead (e.g., IFB, RFP, etc.)

Appendix B – Procurement Response

OFFICE OF PROCUREMENT

Marc Elrich
County Executive

Avinash G. Shetty
Director

MEMORANDUM

May 25, 2021

TO: William Broglie, Internal Audit Manager
               Office of Internal Audit

FROM: Avinash G. Shetty, Director
               Office of Procurement

SUBJECT: Office of Procurement Formal Comments - Targeted Internal Control Review –
               Procure to Pay - Needs Assessment, Solicitation, and Contracting

I am in receipt of Montgomery County's Internal Audit (MCIA) draft report of the Targeted Internal Control Review - Procure to Pay - Needs Assessment, Solicitation, and Contracting, and also shared some technical comments. The SC&H Group (SC&H), under contract with MCIA, performed this audit. The Office of Procurement ("Procurement" or "PRO") works hard and is committed to strengthening internal controls and staff continue to seek ways to improve processes. This audit recognizes this commitment by its results that state in part, "The P2P operation for Procurement Contracts appears to contain an established control environment with preventive and detective control activities designed to mitigate fraud risks… no control deficiencies were identified… included appropriate signatures evidencing what appeared to be proper approval of both solicitation and contract documentation… delegations of authority that were properly supported and maintained by Procurement in compliance with the Delegations of Authority Matrix."

I understand that since the control environment appeared effective, SCH took its observations and instead provided two recommendations focused to improve efficiency and transparency, which were to update, review and approve the Procurement Guide to reflect current practices, systems and requirements as well as to evaluate opportunities to automate the Procurement contract process, to the extent practical, within one system.

PRO Comments:

As noted in the report, Procurement was already in the process of reviewing the Procurement Guide for updates. A procurement staff workgroup was established that further reviewed and refined the updated draft provided by the Chief of Operations and then shared it with the Office of the County Attorney (OCA) for its review. The issuance was held pending this report in case any additional updates may be warranted. While Procurement does not believe all the finding items are necessary for inclusion (e.g., the guide is not intended to repeat everything from the Regulations), it had already recognized the importance of updating the Guide and appreciates the thorough review from SCH. The Office of Procurement intends to issue the updated Guide by August.
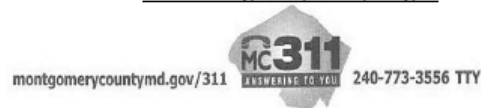
Additionally, as it relates to evaluating opportunities to automate the Procurement contract process, Procurement did include an e-bidding system in its budget proposal, as a first step; however, it was not recommended by the BOLT team that evaluates budget proposals. Nevertheless, Procurement reviewed systems that provide a no-cost solution with certain functionality and discussed it with OCA. As a result, Procurement has piloted RFPs using BidNet (e-bidding solution) and incorporated lessons learned into its process. We are moving to the next phase to include IFBs. This allows vendors to submit responses without paying a fee and allows receipt and transmission of e-proposals and eventually e-bids from vendors to Procurement and then to departments. Moreover, Procurement has implemented departmental collaboration folders allowing review, approval and workflow of solicitations via the YODA system as well as additional workflows and internal approvals so the solicitation file can reside and be accessible online. Resulting contracts and documents have also been included as part of the centralized files. Procurement will continue to evaluate opportunities for automation noting, however, that any one system would ultimately require an enterprise review and intent with other Core Business groups, which is unlikely at this time considering the implementation and investment of the Oracle ERP system that integrates key workflows from various core business modules.

In conclusion, I appreciate the time taken and analysis performed by you and the Auditors from SC&H. We look forward to building on the work already done and will continue to seek improvements.

cc: Pam Jones, Division Chief, Operations, PRO

Appendix C – OCA Response

Marc Elrich
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Bill Broglie, Internal Audit Manager
             Office of Internal Audit
             Office of the County Executive

FROM: Marc Hansen, County Attorney *Marc Hansen*

DATE: June 23, 2021

RE: Formal Comments on Draft Internal Audit Report: Targeted Internal Control Review –
             Procure to Pay: Needs Assessment, Solicitation, and Contracting

Thank you for the opportunity to respond to the above referenced draft internal audit report. The Office of the County Attorney (OCA) played a major role in the development of Administrative Procedure (AP) 2-4 and has taken a number of actions to enhance the processes and controls concerning the implementation of the AP. As noted in the report, these actions, along with those administered by the Office of Procurement for Chapter 11B procurements, have helped ensure that there is an effective control environment with preventive and detective controls associated with the procure-to-pay processes.

We acknowledge that, as with any process, there are opportunities for improvement. Certainly, there are challenges and difficulties inherent in the implementation of any new program or process, requiring time and attention to work through such issues.

In addition to OCA's responsibilities with regard to providing legal counsel with respect to the creation and negotiation of Agreements pursuant to the AP, OCA is also tasked with cataloguing all such Agreements in the AP 2-4 inventory. While OCA believes that the inventory presently meets with the requirements of the AP, OCA agrees that certain upgrades to the inventory can make for a more user-friendly interface. As such, OCA has taken steps to update the inventory such that all information required by Section 6.0 of the AP will now appear on the face of the Inventory.

OCA respectfully disagrees with considerations 1 and 2 relative to Recommendation 1.1, however. Inclusion of a field in the inventory to capture whether: 1. an Agreement is subject to Section 8.0 or is excluded per AP 2-4 Section 8.2; and 2. provisions of AP 2-4 Section 8.0 were not applicable for a specific Agreement, will provide no discernible value in enhancing the goals of the AP. Moreover, the AP does not require that such information appear in the inventory.

Formal Comments on Draft Internal Audit Report: Targeted Internal Control Review – Procure to Pay;
Needs Assessment, Solicitation, and Contracting
June 23, 2021

As mentioned above, we have continued to make enhancements to those processes identified in the AP for which the Office of the County Attorney is responsible. The report notes the unique "gate-keeper" oversight role performed by this Office, due in part to the requirement that OCA review all Agreements for form and legality prior to final execution of those Agreements. As we indicate in this response, we generally concur with the two recommendations made in the report: improvements to the Agreements database (improvements we have been working to implement over the last six months) and ensuring documentation, required by the AP and provided by the responsible department, is available in the inventory. We will take appropriate actions to address both recommendations.

Thank you for addressing these issues in your report.