Final Report

A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds

(including Management's Proposed Corrective Actions)

Report # OIG-19-002

November 19, 2018

Montgomery County Maryland
Office of the Inspector General

Report in Brief

A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds

(including Management's Proposed Corrective Actions)

Background

The Office of the Inspector General undertook this investigation of the former Montgomery County Department of Economic Development (DED) after receiving evidence that DED's former Chief Operating Officer (COO) had misappropriated County funds. The individual we refer to as the DED COO served in more than one capacity in DED from 1997 until its dissolution, and later served in a position conducting activities related to the County's Business Innovation Network until June 2017, when the individual's County employment was terminated. The separate criminal investigation of this matter and any related charges are not addressed in this report. The Montgomery County government abolished the Department of Economic Development by the start of FY 2016, prior to discovery of the DED COO's actions.

Why We Did This Review

The objective of this review was to comprehensively identify systemic problems and related financial and management control deficiencies over the multi-year period, and recommend effective remedies.

What We Found

Former DED Directors used a 2006 agreement with a public entity to escape oversight by County government and create a standing reserve fund for use by the DED Director. The fund's availability increased the risk of improper financial transactions. Essential segregation of duties was absent within DED, and top-level DED management oversight was extremely weak.

Over an eleven year period, the DED COO took advantage of control weaknesses to divert at least $7.2 million from the County's Incubator Program without apparent detection or impact on program operations.

In implementing the BioScience initiative, DED management used public entities to fund the development and operations of a BioHealth intermediary without executing a formal Memorandum of Understanding (MOU) or Contract.

What We Recommend

We made three sets of recommendations to address the findings of the investigation, in the following areas:

- Management should strengthen controls over financial transactions and payments, consistent with and complementary to recommendations contained in reports issued by auditors engaged by the County;
- Management should ensure that it divides or segregates key duties and responsibilities among different people; and
- Management should ensure that there is an annual comparison of budgets to actual expenditures which includes an explanation of how any variance relates to actual program accomplishments.

These recommendations are consistent with or complementary to recommendations contained in reports issued by contractors engaged by the County.

Actions Taken by the County to Strengthen Controls and Processes

County management provided us with a summary of the corrective actions it has taken or initiated as of October 2018 to strengthen controls and processes in response to the issues that came to light surrounding actions of the former Department of Economic Development (DED) Chief Operating Officer. This is presented in the Summary of Findings section of this report.

Table of Contents

A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds *(including Management's Proposed Corrective Actions)*

Background

The Office of the Inspector General (OIG) had conducted inquiries into several previous complaints about problems within the department. In addition to complaints related to DED management misconduct related to personnel issues, which we referred to the CAO for internal review and action, we received complaints regarding circumvention of contracting and procurement rules. However, we did not identify violations related to the specific matters presented by those complainants. Further, none of the complaints implicated the DED COO.

We did not review all the functions of the former DED. Activities formerly provided by the DED, including the County's Incubator Program and bioscience intermediary activities, were reviewed in this report. Other former DED activities - agricultural preservation and enhancement functions, workforce development, the Economic Development Fund, and economic grants – are not included within the scope of this review.

In early April 2017, the Montgomery County Office of the County Attorney received a summons from the Internal Revenue Service requesting all records in possession of Montgomery County, Maryland, related to the former Chief Operating Officer of the Montgomery County Department of Economic Development, and the;

- Chungbuk Incubator Fund LLC, which received payments from the DED, and;
- Chungcheongbuk-do Province, a province of the Republic of Korea with which Montgomery County had had a relationship for mutually beneficial economic development, and a member of Chungcheongbuk-do's Exchange Staff.

Upon receipt of the summons, the County began its own review of transactions related to these parties.

In early May 2017, a member of the Office of the State's Attorney for Montgomery County met with the County Inspector General to discuss its ongoing criminal investigation involving the DED COO. At that time, the Inspector General agreed to not initiate, and further to suspend any ongoing audit activities that might involve or be related to the DED COO in order to avoid inadvertently interfering with the criminal investigation. Subsequently, the County Attorney asked the Inspector General to participate in his staff's briefing of the County Chief

Administrative Officer (CAO), at which time they provided specific evidence of several improper transactions and other related facts.

The County CAO subsequently advised the Inspector General of the CAO's intent to immediately engage CAO staff, along with any necessary contract expertise, to perform a review of existing accounting controls, and fully investigate and identify all potentially fraudulent or inappropriate transactions, including those related to the former DED and related parties. We agreed that the IG would participate in this effort.

- The County Office of Internal Audits engaged the accounting firm of SC&H Group to evaluate the internal controls related to the County's oversight of specific aspects of Procure to Pay operations as they existed at the time of their review. An additional objective of their review was to focus on the identification of process and control deficiencies related to agreements for programs that are exempt from, or not subject to, procurement regulations.
- The Office of the County Attorney retained the accounting firm of Baker Tilly Virchow Krause to conduct a forensic investigation.
- The role of the IG, to complement the efforts of the County and avoid duplication of effort, was to understand the findings and recommendations in these reports and, along with our independent work, identify systemic financial and management control deficiencies over the multi-year period, and recommend effective remedies.

For the purposes of our review, we used the GAO's *Government Auditing Standards* definition of internal controls which includes planning, organizing, directing, and controlling program operations, and management's system for measuring, reporting, and monitoring program performance.

Throughout the time period covered by this report, the individual to whom we will refer as the DED COO served in more than one capacity in the Department of Economic Development (DED) from 1997 until its dissolution, and later served in a position within the County government conducting activities related to the Business Innovation Network (Incubator Program) until June 2017, when evidence of the misappropriations was discovered and provided to County management. The individual's County employment was subsequently terminated. Related criminal charges have become a matter of public record but are not the focus of this report.[1] However, the facts that were stipulated and agreed to had that case proceeded to trial in the US District Court for Maryland are contained in Appendix E of this report.

During our review, which covered the period of Fiscal Year 2005 into the beginning of Fiscal Year 2018 (the Period of the OIG's Report), we identified more than $7.2 million that had been diverted from intended use by the DED COO.

1 The use and disposition of funds have been the subject of the investigation by the United States Department of Justice and the Office of the State's Attorney for Montgomery County Maryland.

Summary of Findings

Four individuals served in the position of Director of the Department of Economic Development between 1995 and 2016:

- DED Director 1 served from 1995 until 2006 during the creation of the Incubator Program[2], and subsequently served as Maryland Secretary of Business & Economic Development, as a Senior and Executive Vice President with different banks, and currently with Scheer Partners Management, Inc. (Scheer), a commercial office real estate firm and a sub-contractor to DED with whom he has served as a Senior Vice President since 2011. Former DED Director 1 was replaced as department director during the government transition that followed the election of County Executive Isiah Leggett.
- DED Director 2 succeeded DED Director 1, and served until 2009,
- The Former DED Director served between 2009 and 2015, and
- A person we will refer to as the Former Acting DED Director, who had served previously as the Director of the Rockville Economic Development Inc. (REDI) and as the former Deputy Director of DED, served as Acting DED Director from January 2015 until the DED was dissolved and replaced in 2016 by a non-profit, public-private partnership, the Montgomery County Economic Development Corporation (MCEDC) created with the recommendation of the County Executive and vote of the Council.

Finding 1 Former DED Directors used a 2006 agreement with a public entity to escape oversight by County government and create a standing reserve fund for use by the DED Director. The fund's availability increased the risk of improper financial transactions.

A 2006 Management Agreement (2006 Agreement) between Montgomery County and the Maryland Economic Development Corporation (MEDCO), a public entity[3], contains a Special Reserve Account funded from any royalties and annual operating surpluses, which provided the

[2] The Business Innovation Network traces its origins to the 1993 Montgomery County Technology Center in Rockville.

[3] County Code 11B-1 defines *Public entity* as: (1) the federal government; (2) a state government and any of its agencies; (3) any political subdivision of a state government and any of its agencies; (4) any board, commission, or committee established by federal, state, or local law; (5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and (6) any other entity that is: (A) qualified as a non-taxable corporation under the United States Internal Revenue Code, as amended; and (B) incorporated by an entity under paragraphs (1) through (5) for the exclusive purpose of supporting or benefiting an entity under paragraphs (1) through (5)

DED with complete control of unused public funds available for the procurement of unspecified economic development projects approved at the sole discretion of the DED Director.

This arrangement circumvented management controls established by the County government, avoided transparency and oversight by elected County officials, and created a standing reserve fund for use by the DED Director. The County is required to follow County procurement law,[4] which does not require a public solicitation or justification for a public entity, non-competitive procurement. Contracting controls did, however, require that the Director of the Office of Procurement determine that the engagement was in the best interest of the County, and that the contract otherwise meets the legal and risk management review requirements set out under County procurement regulations.[5] DED circumvented all of these requirements, and was able to misuse the public entity contract with MEDCO to avoid existing management and financial controls.

The Special Reserve Account appears to trace its origin to the County's June 1998 Grant Agreement[6] with MEDCO to manage the Incubator Program housed in a facility that would result from MEDCO's issuance of Lease Revenue Bonds for the Maryland Technology Development Center.[7]

The 1998 Grant Agreement and 1998 Trust Indenture coordinated language to establish a Special Account at MEDCO to accumulate funds[8], the existence and amounts of which would not be readily apparent to management, the Council, or County residents (a relationship hereafter referred to as "Off-Book"). This Off-Book account appears to have been carried forward into the subsequent grant agreements for additional Incubator Program facilities and their renewals.[9]

After it entered into the management agreement with the County, MEDCO employed Scheer[10], the firm referenced above, as a subcontractor to provide facility management, accounting, and related services for the Incubator Program at that facility.

4 County Code, §11B, generally.

5 County Code, §11B-41. COMCOR §§11B.00.01.01.3 and 11B.00.01.09.2.

6 §1.1, Grant Agreement dated June 1, 1998 between The Maryland Economic Development Corporation and Montgomery County, Maryland. This agreement was recommended by then DED Director 1, and signed by then County Executive Doug Duncan.

7 Trust Indenture for the $4,490,000 Maryland Economic Development Corporation Taxable Lease Revenue Bonds (Maryland Technology Development Center Project), Series 1998, Dated as of June 1, 1998, between Maryland Economic Development Corporation, As Issuer, and Crestar Bank, As Trustee.

8 The agreements define the calculation of an "Operating Surplus" which may be deposited into a "Special Account" "only if the MIDFA Insurance Agreement is not in effect, MEDCO shall deposit the Operating Surplus into a separate interest bearing account (the "Special Account"), Monies deposited into the Special Account may only be used for economic development projects in Montgomery County, Maryland, as approved by the Director of the Montgomery County Department of Economic Development (the "Director")." 1998 Grant Agreement §1.1. 1998 Trust Indenture §4.08.

9 The Special Reserve Accounts (alternately, Special Account) remained as a feature in the 2006 revision of the DED Management Agreement (2006 Agreement) with MEDCO and subsequent 2007 and 2016 grant agreements.

10 This arrangement between MEDCO and Scheer occurred during DED Director 1's term. DED Director 1 currently serves as a Senior Vice President of Scheer.

Finding 1(a) Essential segregation of duties were absent within DED.

"Segregation of Duties"

> Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.
>
> *Source: GAO-14-704G Federal Internal Control Standards*[11]

The 2006 Agreement specified that the DED Director could make decisions or authorize actions without additional consent or approval from the County, and could designate such authority to other individuals. The agreement, as created through MEDCO and Scheer by then DED Director 1, and implemented by later DED Directors, either through intentional design or unintended consequence, ultimately ensured that all financial transactions and information related to the Incubator Program, although available to other entities within the County, would pass through the DED COO.

Budget formulation, budget execution, vendor engagement and management, and invoice processing and approval are responsibilities normally expected to be implemented and managed with appropriate segregation of duties within individual departments and offices within County Government. Decentralized management relies on the design and execution of effective controls at departmental levels, and the existence of centralized oversight and monitoring functions. Prior to August 2017, segregation of duties under the County's decentralized management concept was expected but not required, nor was there an external system of enforcement.

Accordingly, there were no systems in place designed to detect deviations on the parts of the departments that could indicate the misappropriation of County funds. Further, the lack of a formal, documented procurement-exempt agreement policy resulted in a gap in oversight that failed to identify ineffective department controls and allowed for the misappropriation of County assets.

This put the DED COO in a position to act with the full authority of DED management, but outside its oversight and outside the purview of internal controls in place for transactions within the County's systems. DED management did not implement effective internal controls designed to exercise its oversight responsibility, monitor the department's control systems related to payment approval authorities, safeguard against unsegregated key duties, nor evaluate results.

[11] Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government*, page 47. Government Printing Office, September 2014.

This situation represented a lack of segregation of duties that should have been recognized and corrected by DED management.

The agreements containing the Special Reserve Account arrangements were made openly, and seemingly with appropriate County approvals.[12] These circumstances, when combined with financial management control weaknesses (discussed later in this document) that existed within the County Department of Finance (DoF), left the County government vulnerable to losses from improper or inappropriate payments, and had future consequences.

Subsequent DED Directors either did not recognize or were unconcerned about the inherent operating vulnerabilities created by the 1998 and 2006 agreements. We found no indication that either the County Department of Finance or the County Office of Management and Budget were aware of or ever expressed concerns about these vulnerabilities.

Finding 1(b) Top-level DED management oversight was extremely weak.

In a voluntary interview during August 2018, the Former DED Director described his management of DED as "Hands Off". Other evidence we located indicates that the Former DED Director was not engaged in daily DED operations. In a June 2009 e-mail, the DED managers were advised to go through the Former DED Director's calendar and send him "a BRIEF e-mail updating him on any issue(s) that may be discussed during his meetings for that week." The purpose of the "bulleted" e-mails was to be sure that the Former DED Director was aware of what the staff reported they were doing in a concise fashion. This change followed an earlier message in which the DED COO had been directed to reduce the Director's weekly meeting with the department managers from one hour to one half-hour.

Politically appointed Directors are often short-tenured, focused on executing the policy objectives of an administration, and may not be either willing or qualified to manage career staff in a governmental organization. Career senior managers must be relied upon to carry out the agenda of the elected officials and their political appointees. However, those managers, especially those with financial responsibilities, should not be allowed to become entrenched in their program areas and immune to oversight and administrative or accounting controls.

[12] In June 1998, then DED Director 1 recommended a bond indenture agreement and Management Agreement, reviewed by an OCA Staff Attorney and signed by then County Executive Doug Duncan that established a Special Account at MEDCO to be funded by operating surpluses

"Tone at the Top"

> The oversight body and management lead by an example that demonstrates the organization's values, philosophy, and operating style. The oversight body and management set the tone at the top and throughout the organization by their example, which is fundamental to an effective internal control system. In larger entities, the various layers of management in the organizational structure may also set "tone in the middle."[13]
>
> *Source: GAO-14-704G Federal Internal Control Standards*

The Former DED Director acknowledged that he had provided his password to the DED COO and possibly to other staff members, although he could not specifically remember with which other staff members he might have shared his password. Access to the shared password would have given the DED COO the ability to log on to the County information technology system as the Former DED Director and conduct transactions, such as sending e-mails, under the Former DED Director's name.

It might have been possible under those circumstances for the DED COO to have hidden e-mails from the Former DED Director. However, attempting to cover the traces of e-mails so that the Former DED Director would not have been aware of them would have required numerous steps. It is probable that then Former DED Director would have detected any proxy e-mails, unless he seldom checked his own e-mail. Nonetheless, during the August 2018 interview, the Former DED Director was presented with hard copies of many e-mails that appeared to have originated from his e-mail address and been sent by him. Some of the e-mails he claimed not to remember. Some of the e-mails, he further claimed, did not appear to be his work products.

Montgomery County's Administrative Procedure 6-7 and Computer Security Guidelines direct that employees must not share identification passwords with others.[14] Connection and access to computing resources is controlled through unique user identification (user-ids) and authentication (passwords). The Administrative Procedure states *"Each individual granted this privilege is responsible and accountable for work done under their unique identifier"* (IG emphasis added).[15] Administrative Procedures caution that "A County employee who violates this administrative procedure may be subject to disciplinary action, in accordance with [applicable laws and regulations[16]]" and that "[v]iolation of this procedure is prohibited and may lead to disciplinary action, including dismissal, and other legal remedies available to the County."[17]

Further examples of inadequate management oversight are presented in the discussion of Finding 2.

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13 Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government*, §1.03, page 22. Government Printing Office, September 2014.

14 Administrative Procedure 6-7 6-7 §4.4(B), and Computer Security Guidelines §5.2.

15 Computer Security Guidelines §2.

16 Montgomery County laws and executive regulations, including Personnel laws and regulations, and Ethics Laws, currently codified at Chapter 33, COMCOR Chapter 33, and Chapter 19A of the County Code, respectively, and applicable collective bargaining agreements, as amended.

17 Administrative Procedure 6-7 §3.6

Recommendation 1: We recommend that County management provide and ensure implementation of specific and adequate guidance relating to public entity procurement regulations and guidelines for departments and agencies, to ensure they observe the intent of County public entity purchasing laws and appropriate use. It should be emphasized that serious consequences arise when an entity acts in any manner to circumvent contracting, financial, and procurement controls because the entity's management deems them to be an impediment to their operations.

Recommendation 1(a): County management should ensure that it divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.

Recommendation 1(b): Periodic rotation of staff with financial responsibilities is a fraud prevention and detection technique. Periodic rotation of managers is an accepted executive development and succession planning technique. We recommend the periodic rotation of career managers among departments to help prevent them from becoming entrenched in their program areas and immune to oversight and administrative or accounting controls.

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Flawed Execution of Two Department of Economic Development BioScience Initiatives

BioSciences emerged as a strategic economic initiative for the County during the fall of 2008.[18] At that time, press releases and internal memoranda indicate that the County Executive, County Council, and County management were focused on stimulating economic growth from new and previously untapped opportunities that existed within the County.

In December 2008, then DED Director 2 distributed an economic development strategy entitled "A Vision for Economic Development in Montgomery County' (DED Strategic Plan). That plan presented reasonably well articulated and measurable goals, action items, and related accomplishments for economic development in Montgomery County. Bioscience initiatives were addressed in the document.

Execution of the Chungcheongbuk-do Initiative

The County, led by County Executive Isiah Leggett and accompanied by local business leaders and a DED contingent, undertook a trade mission in October 2008 to visit the Republic of Korea (Korea) and its Osong biotechnology cluster. The mission promoted Montgomery County to South Korean companies seeking North America strategic opportunities, and encouraged investment in County's life sciences and advanced technology sectors. During this visit, the Governor of Chungcheongbuk-do Province Korea (Chungcheongbuk-do) pledged $2 million to be used for the construction of the East County Center for Science and Technology.

In a November 6, 2008 memorandum regarding the *Montgomery County Business Development Mission to Korea and China* to then DED Director 2 and the DED COO, DED Business Development Staff observed that "[t]he core strategy deployed by the County thus far has been to highlight the strong presence of federal regulatory agencies and research institutes. A missing piece of the puzzle here is how international companies could leverage these assets to achieve success in the U.S." With respect to the $2 million pledge, they recommended that the County should "[f]inalize the proposed joint incubator development agreement with Chungbuk" to enable Chungcheongbuk-do to incorporate the pledge in its 2010 budget request. The

[18] In early 2009, County Executive Isiah Leggett also commissioned a 29-member Green Economy Task Force for the purpose of charting "a bold new course for Montgomery County focused on creating opportunities for new and existing 'green' businesses, spurring innovation, increasing employment, and developing next generation technologies."

Chungcheongbuk-do Provincial legislature subsequently adopted a budget in 2010 that included funds for the contribution.

It is not certain whether the DED had articulated any strategic expectation or explored the specific outcomes for international companies to leverage the presence of federal regulatory agencies and research institutes to stimulate biotechnology economic development in Montgomery County. It was apparent, however, that as initial cooperative efforts for the development of the East County Center began to falter, the DED COO led efforts within the County to repurpose use of the pledged funds. Correspondence among the DED COO, the executive directors of DED and MEDCO, and a Chungcheongbuk-do official began to explore use of the Chungcheongbuk-do investment for rent-free office and lab space at the County's Shady Grove Incubator.

The initial intent of the relationship was to establish and promote cooperative strategies and processes related to the development, implementation and operation of joint programs and projects to accelerate biotechnology and other high-tech economic development in both regions. By February 2010, however, officials from Montgomery County and Chungcheongbuk-do Province developed a Memorandum of Understanding (MOU) to repurpose the Chungcheongbuk-do pledge for use as additional funding for the County's Small Business Revolving Loan program in exchange for Chungcheongbuk-do future access and use rights in the East County Incubator.

The repurposing of Chungcheongbuk-do pledged funds was not subject to clearly established objectives, nor monitored for performance. Additionally, the Office of the County Attorney (OCA) Staff Attorney raised questions regarding the MOU as it appeared to be unusually one-sided in the County's favor. DED Management's push to fulfill a biotechnology-focused economic development vison absent strategic expectation or anticipated outcomes may have provided an opportunity for mismanagement of the Chungcheongbuk-do relationship for the benefit of the DED COO.

The Chungcheongbuk-do bioscience initiative, largely negotiated and managed by the DED COO, does not appear to have achieved any meaningful result, and Chungcheongbuk-do's entire monetary contribution was ultimately returned after four years, with interest and fees[19], and with much wasted effort on behalf of, but no apparent beneficial impact for, the County. In a subsequent e-mail exchange with a consultant, the DED COO reminisced "it took me nine years and three governors to finalize a partnership with Chungbuk province but I terminated it after 3 years due to their non actions and ridiculous demands. Similar with China. We have two MOUS but all BS."

[19] The interest returned to Chungcheongbuk-do did not observe the interest calculation set forth in the MOU, paying a portion of the interest (70% of ~4%) and 100% of the fees (1% of the principal amount of any loan) for the two loans made by the Small Business Revolving Loan Program. The MOU provided for the County to retain interest earned on the $2 million before its use as part of the SBRLP.

Finding 2 Over an eleven year period, the DED COO took advantage of control weaknesses to divert at least $7.2 million from the County's Incubator Program without apparent detection or impact on program operations.

Between 2007 and 2016, the DED COO directed payments from resources belonging to the Montgomery County government and incubator-licensee funded Incubator Program to a relative of his spouse, to a business owned by that relative and his spouse, and to a commercial checking account for a shell company established in 2009 - the Chungbuk Incubator Fund LLC (CBIF) and to business associates related to that shell company. Records show that the DED COO established the CBIF commercial checking account and was a member of the CBIF. The majority of the payments went to this fictitious business that he controlled. To date we have identified 30 payments totaling more than $7.2 million made that originated either from the County government or the Incubator Program.

Payments made to CBIF related entities by:	# of Payments	$ of Payments
Montgomery County Government	12	5,529,464.63
Scheer	8	1,163,987.63
MEDCO	10	549,200.00
Total	30	$7,242,652.26

In our August 2018 interviews with former DED Directors from the 2009-2016 time period, neither the Former DED Director nor the Former Acting DED Director acknowledged ever having approved of the establishment of, or even having heard of, the CBIF. We found no legitimate business purpose served by the establishment of the CBIF shell company and no legitimate reason that any of the funds should have been transferred to the commercial account of the CBIF shell company. The Office of the Inspector General (OIG) was advised by law enforcement investigators that the DED COO withdrew funds from the account of the CBIF shell company exclusively for his personal use and that none of the funds deposited to that account were used to support the objectives of the DED Incubator Program.[20]

DED staff voiced concerns at some point prior to 2014 about the actions of the DED COO to the MEDCO Director, who was alleged to have replied "this is [the DED COO's] money - the County's money to spend. We're not going to argue with them. It's not [my] role to monitor how Montgomery County spends their funds." Between 2007 and 2016, the DED COO directed MEDCO to make 10 payments totaling $549,200 to a relative of the DED COO's spouse, a

[20] The use and disposition of funds deposited in the CBIF checking account have been the subject of the investigation and legal proceedings by the United States Department of Justice and the Office of the State's Attorney for Montgomery County Maryland. We were advised that these agencies had identified payments benefitting the DED COO.

business owned by the relative and spouse, to the shell company, and to business associates related to that shell company.

In an interview with MEDCO, the OIG was told that the MEDCO Director had contacted then Former DED Director to confirm whether or not MEDCO was to accept instructions it received from the DED COO. In a separate interview, the Scheer COO reported that he, too, sought similar assurances. We were advised that the Former DED Director defended the authority of the DED COO, provided oral authorization, and purportedly provided the following July 22, 2010 e-mail as evidence of the DED COO's authorities:

> "This e-mail is to require that effective immediately, all budget, fiscal, procurement (commodity/service purchase, contract and MOU), and administrative and human resource (except for the division unique time sheet and comp time approval, and performance review and work program setting) issues must be reported to [the DED COO]. As the department's Chief Operating Officer, his concurrence/approval must be obtained before a decision is made.
>
> Most of you already work under this protocol. However, with the implementation of new Enterprise Resource Planning System and the new Procurement Regulation, together with the County government's renewed emphasis on accountability and operational efficiency, I want to ensure that there is a central and traceable process in all expenditures, commitments, and administrative decisions that DED makes.
>
> If [the DED COO] is not available for urgent issues, [a named, alternate individual], Senior Financial Specialist must be consulted for the next course of action.
>
> I appreciate your adherence to this requirement."

MEDCO asserted that the above e-mail ceded complete authority for the DED COO to act on behalf of DED. However, the language of the e-mail only provides for the DED COO's concurrence on operational matters.

Although both MEDCO and Scheer claimed to have questioned the Former DED Director about the DED COO's authority to instruct that payments be made to CBIF, neither MEDCO nor Scheer received contracts or other appropriate documentation between CBIF and the County prior to making those payments directed by the DED COO.

We obtained copies of financial reports and records related to the incubators that Scheer provided to the County. Despite our concerns about the reliability of the accounting data presented in those financial reports, they contained significant useful information including such things as payments made from the Incubator Program accounts.[21] They also indicate payments to the shell company. A manager reviewing those financial reports could have found sufficient concerns about the Incubator Program and the activities of the DED COO to at least raise questions. During his tenure, the Former DED Director was in a position to detect the existence of the shell company. The Former Acting

[21] Upon our recommendation, the Office of the County Attorney modified the scope of its forensic investigation engagement with the accounting firm Baker Tilley to include an investigation and reconstruction of the Incubator Program accounting records maintained by MEDCO and Scheer.

DED Director was also in a position to detect the existence of the shell company during her tenure. Yet we found no evidence to demonstrate that either the Former DED Director or the Former Acting DED Director personally reviewed any financial reports or took any action to seriously examine the actions of the DED COO.

It is somewhat surprising that the Former DED Director never reviewed financial statements of the incubator programs since, as he told us, he had to become personally involved in managing issues related to licensees whose past due rent payments were putting a financial strain on the program. Former Deputy Director and the Former Acting DED Director confirmed the Former DED Director's account of the need for his involvement attributable to the past due payments. However, during their August 2018 interviews, both stated that they had not reviewed the financial statements provided by Scheer.

Their management of the staffing and finances of the Department demonstrated a lack of attention and oversight. We noted that the non-merit Position Description for the DED Director, occupied as a political appointee, did not specify any supervisory, oversight or managerial duties or responsibilities related to the department. However, in interviews, both the Former DED Director and the Former Acting DED Director told us that as Department Directors, they approved the performance ratings of top managers, including the DED COO. Therefore, despite the position description, they evidently understood themselves to have had responsibilities for supervision and oversight of the senior Department staff.

The individuals responsible for ensuring that the licensees made timely payments and that the Incubator Program was financially sound were initially direct subordinates of the DED COO, who should have been held accountable for the financial mismanagement due to delinquent rents collection that was observed. It is therefore notable that despite Incubator Program management problems that had developed to such an extent that the Former DED Director's direct intervention was required to effect correction, the DED COO evidently suffered no adverse consequences as the result of his mismanagement. Instead, both the Former DED Director and the Former Acting DED Director acknowledged providing the DED COO with the "highest possible" performance evaluations during their respective tenures resulting from what each characterized as the DED COO's high level of competence, strong abilities, and responsiveness.

The DED COO was highly placed within the organization, had financial management responsibilities, and had significant authority as well as knowledge of existing internal controls and management. He was unusually well positioned to understand the opportunities presented by gaps in the system of controls in place at various points in time. Several examples follow, and are described in further detail in the *Evaluation of Findings* section

1. Between April 2007 and September 2009, DED COO instructed MEDCO to make $163,000 in payments to a relative (Relative) of the DED COO's wife (Spouse). These payments, purportedly for the Relative's work on a Feasibility Study related to the Life Sciences Center, were drawn upon County funds on deposit in the Special Reserve Account with MEDCO. We found no evidence to support that the Relative had been authorized to undertake a Feasibility Study, nor was there evidence that such a study had been delivered by the Relative.

2. In June 2008, the DED COO instructed MEDCO to draw upon County funds on deposit with MEDCO to make a $145,000 loan to a restaurant owned 20% by the Spouse, and 80% by the Relative (Spouse/Relative Business). It is notable that with full knowledge of the potential conflict of interest and public attention that was drawn to the 2007 $25,000 Economic Development Program Loan made openly to a company whose Chief Marketing Officer was the son of the then DED Director 2, the DED COO chose to use the public entity, MEDCO, to disburse the loan funding in a manner that hid the existence of the loan.
3. Between 2010 and 2016, knowledge of funds available in, and the operations of the Special Reserve Account at MEDCO allowed the DED COO, pursuant to his delegated discretion and authorities, to redirect the County's grant funding for the Incubator Program to the shell company CBIF while using Special Reserve Account funds to cover any cash shortfalls within the operations of the Incubator Program.
4. Between 2010 and 2016, the DED COO caused invoices to be generated by his shell company, CBIF, purportedly for grant funding and leasehold financial obligations of the Incubator Program. As the financial manager for DED, he would have known that invoices that had been designated with the "Rent/Lease" exempt commodity payments code would have likely, at that time, been processed by DoF Accounts Payable Section without question or challenge for the underlying vendor agreement that supported the payment request submission (even though that agreement did not exist).
5. From at least May 2013 through February 2016 the DED COO directed that rental payments from a sub-lessor of DED office space totaling $125,276.32 be sent to accounts held for the benefit of the Incubator Program. It is not clear whether this action occurred with the knowledge and approval of the Former DED Director. However, this resulted in a clear augmentation of the Department's appropriation outside the view of the County Budget staff and without the knowledge and approval of the County's Executive and Council.

The structure of the Incubator Program provided for budgets to be developed by DED to justify requests for funding during annual budget deliberations. However, prior to FY 2017, once appropriations were approved, the Incubator Program appropriations were not separately identified in the published Council approved budgets. Large "blanket" disbursements from the County were provided to MEDCO, which had the responsibility to further disburse the funds, as necessary to pay for debt repayment, facility leases, facility management fees, and other related expenses.

Once County resources were placed under the control of MEDCO and its subcontractor, Scheer, County accounting and budget staff were forced to rely upon the financial accounting records maintained by those entities or the financial information the DED COO provided regarding the Incubator Program.

We found no evidence that anyone within the County ever made an effort to determine the adequacy of the accounting systems of either MEDCO or its subcontractor, Scheer. Although periodic financial audits of the Shady Grove and Rockville incubator locations were conducted by MEDCO auditors for the preparation of that agency's annual financial reports, none were conducted at the Germantown location at which the County resources were primarily being manipulated by the DED COO. Three transactions the DED COO charged against the Shady Grove and Rockville accounts were not selected for testing during review by MEDCO's auditors.

The County also had the authority to audit the financial records of MEDCO and its subcontractors relative to the Incubator Program, but did not do so. Had they audited the Incubator Program, it is possible that these control issues would have surfaced. Instead, it relied on the assurances provided from the DED COO's review of the financial records.

The DED COO was able, over time, to accumulate reserves from annual operating surpluses at the Incubator Program, derived from County funding and licensee fees. The composite net operating surpluses from the Incubator Program were retained within the MEDCO housed Special Reserves Account, and commingled with operating surpluses and funding activities from periods prior to the period between August 2006 and August 2017.

Based on data made available for our forensic review, net annual operating surpluses between FY2007 and FY2010 added $1.86 million to the Incubator Program funds, allowing the DED COO to cover and obscure any cash shortfalls created by the diversion of the County's annual funding payments for the Incubator Program to CBIF that he commenced in July 2011.

We found no documentary evidence that the Office of Management and Budget (OMB) identified or challenged the significant growth in funding requests (from FY11 to the peak incubator funding request, Germantown rose from $442,000 to $970,500 in FY15, and Shady Grove increased from $200,000 to $1,147,000 in FY16) when the payments were redirected to the CBIF. Neither did we find documentary evidence that OMB was aware of or considered funds available from annual operating surpluses that remained at year's end as a possible offset to new budgetary requests. During the period between August 2006 and August 2017, Montgomery County provided funding in excess of $30 million to its Incubator Program. The chart on the following page depicts the flow of those funds to MEDCO, Scheer, and other entities engaged in the operations of the Incubator Program:

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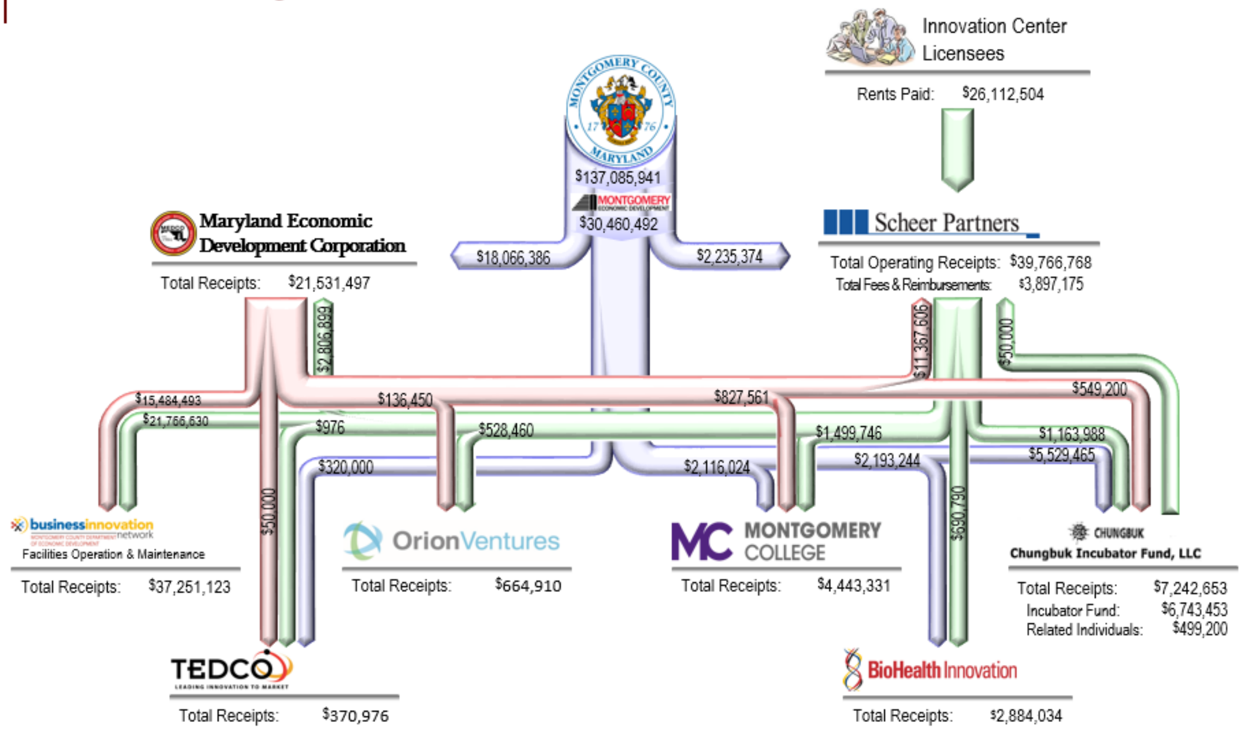
Identified Funding and Cash Flows: FY07 – FY17*



* *August 22, 2006 - August 23, 2017*
Source: OIG Graphic from data provided by Montgomery County, MEDCO, & Scheer Partners

Excess reserves enabled the DED COO to submit invoices for legitimate DED departmental expenditures to be paid from the Incubator Program funding. The money that had been budgeted for these items at the DED departmental level was then available to enlarge the amount that the DED COO could direct as payment to CBIF.

Funding for the Incubator Programs was received as part of DED's annual County Council-approved appropriation. Incubator Program funding was not distributed to MEDCO until the DED received an invoice requesting the annual operating funding for each incubator. Evidence indicates that the DED COO routinely instructed MEDCO as to the Incubator Program funding amount that should be specified on the invoice. The funding amount was not routinely made available for public review, nor did it resemble the pro-forma budget requests prepared by Scheer and DED Staff. CBIF began to submit invoices to the County and receive the annual operating funding payments for the Germantown and Shady Grove Incubator Programs in FY2012.

The internal controls that should have detected or prevented the DED COO's activities were either missing or ineffective as implemented.[22] Although the internal controls present in the

[22] See the discussion of internal controls in the report *"Internal Control Review Procure to Pay – Specific Functions"*, prepared by SC&H Group under an engagement with the County's Internal Audit program, and the *Report of Forensic Audit to Montgomery County, Maryland* prepared by the firm of Baker Tilly Virchow Krause under an engagement with the Office of the County Attorney.

accounting system evolved over the period of approximately 10-years, primary responsibility for the failure to prevent the misappropriation of funds lies with the absence of oversight and management failure of DED Directors, the flawed structure of the Incubator Program, and its management agreements. Specific problems included the lack of segregation of duties, and the DED's deliberate construction of processes to circumvent contracting and procurement requirements, and management controls. It is likely that the budgetary and management system relied on inaccurate and unreliable information and could not effectively control Incubator Program resources or detect suspicious activities.

While DED's management actions and inactions may not at the time have presented an element of risk, over time, the cumulative effect of these decisions created the conditions that enabled the DED COO to opportunistically misappropriate at least $7.2 million of County economic development funding for his own personal benefit, including:

1. The availability of the public entity where funds could be parked, off books, and out of the direct control and scrutiny of the County procurement, legal, financial, and management and budget processes and systems;
2. the agreements with MEDCO and Scheer which institutionalized the creation of accounts within which budget surpluses could be hidden from the County, the ability of the DED Director to charge expenditures associated with programs unrelated to the incubators, and the ability of the DED Director to delegate operation of the incubator program;
3. the acquiescence of MEDCO and Scheer to the purported delegation of total authority for incubator program operations to the DED COO without authorizations from any other County officials;
4. the absence of management oversight and engagement in most DED operational activities which allowed the DED COO to act with impunity;
5. the DED COO's knowledge of accounts payable controls that allowed him to submit and approve payments to the shell company with little to no questioning about the legitimacy of the organization or use of the funds;
6. the absence of segregation of duties that placed the DED COO in a position that not only allowed him to be the central point of focus through which operational, financial, and strategic information flowed into and out of DED, but also allowed him to use accumulated and institutional knowledge that he possessed to navigate the system to his advantage;
7. ineffective Incubator Program performance metrics that apparently failed to detect any impact on program operations during the four-year period when the DED COO diverted the County's Incubator Program funding to the CBIF; and
8. agreements between the County and other parties that lacked a unique identifier, such as a contract or document number, to differentiate the documents by some method other than execution date and signatures of the authorized parties. The absence of a unique identifier made it difficult to match invoices to an appropriate contract, and allowed the DED COO to simply assert that a fictitious payment was authorized under an unrelated agreement.

Management revised accounts payable policies in April 2018, to match procurement payments authorizations to evidence of completion, and in August 2017, to strengthen segregation of duties and public entity payment controls.

Additional recommendations for improvement related to weaknesses identified in financial controls over payment approvals for pre-approved transaction types and contracts are detailed in the Office of Internal Audit's report on *Internal Control Review: Procure to Pay – Specific Functions*.

Recommendation 2

(a): The County should not disburse payment against any grant or contract prior to execution of a document that sets forth, at minimum:

- the terms and specific enumeration of quantifiable and measurable outputs,
- outcomes to be delivered, as well as when, how, and to whom they will be delivered, and
- Office of the County Attorney, Risk Management, and Office of Procurement contract requirements.

Management should require the awardee to submit verifiable evidence of having achieved the stated outputs and outcomes when submitting subsequent invoices for payment against the award.

(b): If the County is using the award to fund the delivery of an out-sourced program or operation, the County should additionally require the awardee to account for the use of the County's funds and require that any surplus funds at the end of the award period be identified and returned to the County, or reappropriated.

(c): *Audit and review of Third-party Providers*: Prior to awarding the responsibility for accounting for County funds, the County should require independent certification of the accounting systems that the public entity, public-private partnership, or subcontractor will use. Annual financial audits and reviews should be performed when expenditures reach significant (to be determined) dollar thresholds.

(d): *Ongoing Budget Execution Reviews* - County Management should ensure that:

- its analysts have the full and accurate information and the tools necessary to independently and continually monitor and compare actual expenditures to appropriated amounts to ensure that progress in programs is proceeding as intended,
- program surpluses or shortages are timely identified, and not allowed to accumulate unless approved by management and publicly reported,
- accounting controls are in place to ensure that any significant program expenditure variances can be apparent to budget analysts in both the Executive and Legislative branches, and
- Department Directors are required to document and report on significant program expenditure variances, as well as their effect on their programs, which are subject to judicious analysis.

(e): Because the elements of control listed below were missing or not evident at the time the questionable payments were processed, management should ensure that each element is addressed in a corrective action plan.[23]

- Enforce Evidence of Receipt: The payment system should ensure that evidence of receipt of goods or services is provided prior to approving any payment. Evidence should be provided that the purchase was authorized (e.g., via purchase requisition and matching purchase authorization) and received (e.g., receiving report).
- Unique identifier: Management should ensure that all contracts, MOUs, loans and mortgages, or other known recurring payments that cover multiple months and/or accounting periods (such as fiscal years) are recorded with a unique identifier in the accounting system. No payment should be allowed without reference to that unique identifier.
- Amounts established in the budget at the outset of each fiscal year for each unique identifier should be assigned a "funds control" such as an encumbrance and authorized payments per cycle (e.g., one payment per month). This is done both to ensure that the budgets are not over expended, and to ensure that the amount set aside for each expenditure is properly expended on the item for which the funding has been appropriated or otherwise intended. This process also guards against duplication of payments for any item since an inadvertent approval of a payment that exceeds funding available for the instrument should cause the payment item to be reviewed and confirmed prior to check issuance

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[23] Many of these recommendations were shared and discussed with the County staff prior to the issuance of the first draft of this report. We also considered the recommendations contained in the Office of Internal Audit's report Internal Control Review: Procure to Pay – Specific Functions, as well as those contained in the Baker Tilly Virchow Krause Report of Forensic Audit to Montgomery County, Maryland referenced above. We believe that the County must develop corrective action plans to implement these recommendations.

Implementation of the BioHealth Innovation Initiative

In a second bioscience initiative that began in the fall of 2008, County Executive Isiah Leggett established a Biosciences Task Force (Task Force) "to help develop a strategy that will enable Montgomery County to more effectively leverage its rich asset base and become a global hub for life science research, development and technology commercialization." The forty-two person task force, whose membership included then Councilmember Mike Knapp and the Former DED Director, issued a December 2009 report, *Montgomery County's strategy for developing a world-renowned life science industry*, providing several recommendations. (See Appendix B: BioScience Task Force 2009 Report.) This OIG report does not evaluate the merit of the Task Force's report or its recommendations.

The Task Force report recommended the creation of a public-private partnership to augment the County's Business Innovation Network with an 'accelerator' that brings together capital resources with promising life science start-ups, and established five bioscience economic development objectives:

1. Enhance the environment for entrepreneurship and the creation of new life science companies.
2. Catalyze greater technology transfer and commercialization and leverage Montgomery County's federal and academic assets more effectively.
3. Foster a more enabling financial, regulatory, and business environment.
4. Enhance bioscience educational opportunities in Montgomery County and expand the higher education presence in Montgomery County to build a robust biosciences workforce and foster commercialization.
5. Market Montgomery County's biosciences sector nationally and internationally.

Finding 3 In implementing the BioScience initiative, DED management used public entities to fund the development and operations of a BioHealth intermediary without executing a formal MOU or Contract.

We sought to understand from County officials familiar with the process how the consultant ultimately selected was found and recruited. It is expected that the County would have solicited a highly qualified external expert to carry out the accepted task force recommendations. For such arrangements, the County Office of Procurement Guide indicates the issuance of a Request for Proposal (RFP). In this case, requirements would have been appropriate to identify and contract with an individual whose background demonstrates the appropriate technical or scientific expertise requisite to lead the process to develop and start up the public-private partnership and assist in engaging that entity's leadership. When we initially spoke with the Current Assistant Chief Administrative Officer Representative (ACAO Representative), we were told that the consultant was referred to the County by someone from Johns Hopkins University, which may be strictly accurate, but was misleading.

Instead of the above process, the Current ACAO Representative indicated that a consultant, the Founder, President, and CEO of the Philadelphia-based Innovation America (Consultant), was originally recommended to the County by an individual at Johns Hopkins University (JHU). Evidence we reviewed indicated the individual making the referral to be an associate of the DED COO with whom he had interacted since at least 2007. That individual was responsible for JHU real estate facilities and Great Seneca Life Sciences Center development initiatives.

We observed that during this same period, the Johns Hopkins University operated a technology transfer organization, then called Johns Hopkins Technology Transfer (JHTT) and currently called Johns Hopkins Technology Ventures (JHTV), was evidently already in existence and providing support similar to that intended by the BioScience Task Force. The County did not engage JHTT, an entity already engaged in biosciences and with a presence in Montgomery County, to lead the County's BioScience intermediary initiative. Instead, the DED turned to the JHU manager apparently responsible for the real estate development and management of the JHU Montgomery County Campus in the Great Seneca Science Corridor for input and recommendations.

We do not know why the DED relied on the individual from JHU's real estate facilities for a recommendation since neither his academic credentials nor his position at JHU are related to economic development, technology ventures, BioSciences, or any other area of science that could appear relevant to the Task Force recommendations. During interviews, we asked Former DED Directors and the Current ACAO Representative about JHTV and they claimed not to have knowledge of the entity.

During a telephone interview, the Current ACAO Representative did not profess to having personal knowledge about the Consultant's qualifications, but was able to provide documents provided by the Consultant. It appears from those documents that the Consultant was introduced to two County Council members via e-mail from the JHU real estate facilities contact as "…someone whom I believe is the best qualified person in the U.S. to advise Montgomery County on how TO PLAN AND EXECUTE our jobs and economic development strategy." According to the Consultant, the JHU real estate facilities individual approached him at a National Academy of Sciences event where the Consultant had been a speaker. They discussed a Montgomery County initiative and the Consultant was subsequently introduced to the Former DED Director. It appears that he was also introduced to other Council members, the County Executive, other County political appointees, and task force members based primarily on the Consultant's own marketing materials, website, and representations of his experience.

In examining the copy of the Consultant's resume provided by the Current ACAO Representative, we found both an absence of academic credentials as well as an absence of verified experience related to relevant BioScience endeavors. The resume lists numerous one-time presentations, membership on numerous boards and committees, and asserts a number of economic development activities since 2001, primarily within activities of which he was apparently the founder and CEO.

The Former DED Director confirmed that he personally "vetted" the Consultant. It is unclear when the vetting occurred. Further, the vetting process described to us appeared to have consisted of reviewing the websites of former entities at which the Consultant claimed to have numerous successes. It does not appear that anyone affiliated with the County independently verified anything listed on the Consultant's resume.

DED solicited external funding to pay for the Consultant's performance of services related to the BioScience initiative on the County's behalf. In late 2010, DED arranged for a series of two contracts to be entered between Rockville Economic Development Inc. (REDI), a public entity, and the Consultant to prepare a Task Force-recommended assessment and implementation plan.

In its relationship with the Consultant and the resultant Consultant-led bioscience intermediary BioHealth Innovation, Inc. (BHI), DED Management allowed REDI to appear to represent the County in deals and funding arrangements to which the County government was not a legal party. The funding of the operations of BHI via a contractor-identified Council grant nullified a requirement for a competitive process. BHI's activities were not subject to any written agreement, nor were the relationship's intent or anticipated outcomes that should accrue to the benefit of the County clearly articulated.

We found no evidence of an agreement or MOU between DED and REDI that provided for REDI to act on the County's behalf in contracting with the Consultant. We did locate a copy of an unsigned letter from the DED COO acknowledging REDI's participation and agreeing to make reimbursement for any administrative costs incurred. This engagement was entered into without any competitive process. Further, an e-mail from the DED COO to the executive director of REDI evidences an intent to circumvent the County's contracting process.

The DED COO wrote to the then executive director of REDI stating "*Due to the make-up of the Committee structure, [the Former DED Director] needs to be the contract administrator. However, given the nature of how the funding is arranged, the County can neither receive the funds nor place a contract with the Consultant. We believe that REDI, as a non-profit organization could receive the private donation and hold the contract. We are making this request not just to circumvent the system and make REDI an accounting conduit. Rather, we make this request because REDI is one of the key stakeholder and the beneficiary in the overall Opportunity Assessment and Implementation Plan development.*"

When asked why he deliberately did not use the County procurement process, the Former DED Director said that it would have taken months. It is our observation that an engagement directly between the County and a consultant would have required following the County procurement process, including documentation of a competitive search process and DED's preparation of a statement of work that specified its requirements and for the initial consultant engagement, none of which was done in this case.

"Tone at the Top" - *continued*

> Management enforces accountability of individuals performing their internal control responsibilities. Accountability is driven by the tone at the top and supported by the commitment to integrity and ethical values, organizational structure, and expectations of competence, which influence the control culture of the entity. Accountability for performance of internal control responsibility supports day-to-day decision making, attitudes, and behaviors. Management holds personnel accountable through mechanisms such as performance appraisals and disciplinary actions.[24]
>
> *Source: GAO-14-704G Federal Internal Control Standards*

It is apparent, however, that the Former DED Director acted to "fast track" the development of the BioScience implementation plan and make the BioScience intermediary operational. To accomplish this, the Former DED Director turned to the DED COO, who was well positioned to understand the system of controls in place. Evidence shows that the DED COO was provided wide discretion in his actions under the Former DED Director, who acknowledged that the DED COO was rewarded with the highest performance ratings and related salary adjustments.

It is unlikely that the Former DED Director could have effectively exercised any oversight responsibilities knowing that a.) he had violated Information Technology policy by providing his password to the DED COO, and b.) he had knowingly allowed, if not directed, the DED COO to avoid County contracting mechanisms.

The DED drafted, $100,000 consultant contract was to be funded by donations from universities and private sector companies. REDI made payments for the consulting work directly to the Consultant to the extent funds had been collected. However, to cover donation shortfalls, the County made an interest free, $20,000 advance to REDI. Another interest-free advance of $12,500 was paid to the Consultant by Scheer with funds drawn upon the Incubator Program, even though the Former DED Director, in an earlier presentation to the Council Planning, Housing, and Economic Development Committee (PHED), had made assurances that no County dollars would be used for this initiative.

Although the County is not a named party to the contract, correspondence between the Consultant, DED, and REDI clearly articulated that the Consultant considered the County to be his client. DED did not dispute that contention.

The first contract between REDI and the Consultant covered the period of November 8, 2010 to January 31, 2011, and it appears to have addressed most of then Councilmember Knapp's recommendations for building upon existing County assets and implementing economic development initiatives. (See Appendix C: *Councilmember Knapp October 2009 Blog*.) The contract's scope of work required that the Consultant identify and affirm initial research opportunities and resources available to support biosciences commercialization efforts within Montgomery County and provide initial recommendations for a biosciences innovation intermediary.

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[24] Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government*, §5.02. Government Printing Office, September 2014.

In March 2011, the Consultant published a *Montgomery County, Maryland Biosciences Cluster Competitive Literature Review* consistent with the scope of his contract with REDI.

The second contract between REDI and the Consultant, covering the period from July 1, 2011 to August 31, 2012 created and implemented an organizational development plan for a new nonprofit entity, the America's BioHealth Intermediary (ABHI) [OIG Note: The intermediary was subsequently renamed BioHealth Innovation.]

The Former DED Director and the Former Acting DED Director stated that the Consultant lobbied for the position of BHI CEO, and he was subsequently named to that position (from this point forward, we will refer to the "Consultant" as the "Consultant/BHI CEO"). In an interview, the Consultant/BHI CEO told us he was asked to take the position. He said he neither needed nor wanted the job but only agreed to take it until the County could find another suitable candidate. The Current ACAO Representative was appointed to represent the County and currently serves as a member of the BHI Board of Directors.

On August 22, 2011, the Consultant/BHI CEO delivered an *Implementation Plan for BioHealth Initiatives for Central Maryland Region* (Implementation Plan) consistent with the scope of his contracts with REDI. (See Appendix D: *Consultant's Implementation Plan*.) The document laid out a one-year implementation plan and a multi-year program for continuing activities targeting the biotechnology, medical devices, healthcare services, e-Health/ mobile health, electronic medical records/ health informatics/ and cyber security industries. The implementation plan set forth key objectives to:

1. Significantly increase the flow of private and public early stage capital to businesses/ entrepreneurs and scientists in the region by leveraging federal/ private/ university, foundation, and international funding resources to support and grow BioHealth companies.
2. Develop an active talent network of entrepreneurs, investors, and experienced managers and an integrated network of all technical and financial innovation and commercialization resources in the region by connecting the federal labs, university, and industry research and technology transfer offices.
3. Actively facilitate tech transfer and commercialization by identifying candidate BioHealth technologies from public, academic, and private sources of research and technologies/ underwriting candidate firms to determine market feasibility, managing and growing funded early stage companies, and facilitating marketing and distribution of products and services of early-stage companies to both domestic and global markets.
4. Create global public awareness of the region's world class BioHealth and technology assets through effective branding, marketing/ market research and public relations.
5. Ensure an adequate supply of knowledge workers to support regional growth of the BioHealth industry by working with educators and workforce development organizations.

After completion and delivery of the Implementation Plan, the County Council appropriated $250,000 for current year funding against a three-year, $1.5 million program commitment. The appropriated funds were paid by the County to REDI, who, in turn, paid BHI.

However, we found no evidence of any contract, memorandum of understanding, or other program management agreement[25] that created, or ever existed among any of the parties - the Consultant/BHI CEO, BHI, MEDCO, REDI, or DED - between July 2012 through July 2016 that set forth the terms, conditions, and deliverables expected of BHI's bioscience intermediary activities in exchange for $2.8 million in County funding awarded under a "non-competitive contract awarded to a contractor identified in a Council-approved appropriation".[26] On multiple occasions, the DED COO and BHI openly stated that no contract or MOU existed, and there was no evident intent that one should be established.

Instead of aligning BHI's performance goals with the Task Force's commercialization and innovation objectives, DED allowed BHI, and consequently the Consultant/BHI CEO, to focus on the attraction of financing for regional activity, much of which was provided from indirect County contributions to the public-private venture capital activities within BHI's wholly owned subsidiary, BHI Management, Inc. (BHIM).

Since April 2012, the Consultant/BHI CEO has provided BHI annual reports to the County Council PHED Committee that consistently reported regional results that did not highlight BHI's direct impact within Montgomery County. Further, the self-reported results bear little relation to the Task Force Report's objectives.

The available data we reviewed did not demonstrate whether BHI provides economic value to the County at a level that exceeded BHI's cost. No meaningful criteria or metrics were created by DED or subsequent County leadership that would create clear expectations for BHI linked to economic development of Montgomery County or a return on the investment by the County government and other contributors. Further, those measures that were created and reported were inconsistent from year to year, and were not independently verified or validated. Absent transparent expectations for any program's contribution to the County, management cannot evaluate the value of its investment of resources in the program and cannot determine whether the funds expended were either put to good use or wasted.

Absent clearly defined expectations and outcomes, specified in a formal contract or MOU, and consistent with the Task Force's recommendations, it is difficult for the Executive and the Council to determine if the results of the initiative are a.) providing sufficient economic impact to justify the expenditure, or b.) are meeting or exceeding expectations and worthy for consideration of additional investment.

BHI's success, and collaterally the Consultant/BHI CEO's personal success, are based on the amount of funding that BHI raises for support of its business operations and investment in its intermediary Portfolio of companies (which as noted below, many of which are not located in Montgomery County).

The publicly available, IRS Form 990 - Return of Organization Exempt From Income Tax returns we reviewed indicate that BHI had collected in excess of $15.2 million in revenue and

[25] There was evidence of an August 2011 draft *Implementation Plan for BioHealth Initiatives for Central Maryland Region*, although that document set forth non-binding 90-day and one year goals.

[26] Montgomery County Code § 11B-14(a)(4) Non-competitive contract award.

contributions, and reported expenses in excess of $11.7 million. Of the expenditures, wages and benefits for employees and independent contractors made up 68% ($8.0 million) of total expenses, and the Consultant/BHI CEO's personal compensation comprised 28% ($2.2 million) of all wages and benefits for employees and independent contractors. The Consultant/BHI CEO provided the County's CAO with information about his level of compensation relative to nine other organizations that he identified as comparable. We reviewed the IRS Form 990 returns for the organizations the Consultant/BHI CEO-identified as comparable and observed that at a reported 2016 revenue of $2.79 million, BHI recorded the second lowest revenues of the organizations, yet BHI's CEO and total staff salaries as a percent of revenues were greater than those of any other organization.

The Consultant/BHI CEO's annual reportable compensation (in excess of $500,000 for each year from 2014 through 2016) was roughly equivalent to the County's annual appropriation for BHI operating costs.

BHI's publicly available Form 990 returns for 2015 and 2016 indicated that grants and loans in excess of $2.4 million were extended from BHI to BHIM, a wholly owned, for-profit subsidiary established in 2014. BHIM, an organization with no reported employees or operating expenses, benefited from BHI-shared personnel valued at $2.2 million via which BHIM provided services to a portfolio of organizations in exchange for fees to or equity ownership by BHIM. Of the portfolio of companies presented on its website[27] and its April 2018 listing of clients[28], BHI identified 33 companies in which BHIM held equity positions. BHIM's stated equity ownership provides the appearance of a portfolio that consisted of 9 (27 %) business entities with a presence in Montgomery County, 17 (52%) businesses located within the Baltimore area, and 7 (21%) entities that were distributed among 5 states and 1 foreign country.[29] We also observed that on its website, BHI asserts credit for helping to launch eight companies that JHTV also lists among the companies it helped launch.

The Current ACAO Representative was appointed to represent the County on the Board of BHI. In a communication to her/him, the County Attorney articulated that the Current ACAO Representative was on the BHI Board to look after the County's interest. However, during the Current ACAO Representative's interview s/he stated that s/he did not feel compelled to report back to the County. Accordingly, it appears that the County did not receive significant financial information or insight about the activities of BHI other than in information provided by the Consultant/BHI CEO. Further, it appears that the information provided by the Consultant/BHI CEO was not verified or validated by the Current ACAO Representative or by the County.

Management has recently introduced Administrative Procedure No. 2-4 to address agreements between Montgomery County Government and other organizations by assigning

[27] http://www.biohealthinnovation.org/portfolio last accessed 27 August 2018,

[28] FY 19 Operating Budget: Incubator Programs - Economic Development Partnership Non-Departmental Account (NDA), County Council Work session, May 10, 2018, analyst packet page ⑥.

[29] Two of the entities reported by BHI could not be located through internet search, and we were thus unable to confirm either existence or location.

responsibilities and establishing general policies and procedures for the preparation, review, clearance, approval, and monitoring of agreements.

Management has taken some steps to address internal controls. However, funds that leave the County as grants to an external entity will remain difficult to control unless management has tied such payments to contracted expectations, deliverables, and outcomes.

Recommendation 3

(a): The County government should ensure that management safeguards and controls are not circumvented, and that effective remedial actions are taken and appropriate sanctions are applied when violations are identified.

(b): For all County-funded economic development programs, the County should clearly identify quantifiable and measurable outputs and outcomes, the successful completion of which should demonstrate specific economic benefit.

(c): For the programs addressed in this review, County Management should conduct an analysis of the programs that determine the relative economic benefit to the County compared to the cost of each program.

Actions Taken by the County to Strengthen Controls and Processes

County management provided us with a summary of the corrective actions it has taken or planned as of October 2018 to strengthen controls and processes in response to the issues that came to light surrounding actions of the former Department of Economic Development (DED) Chief Operating Officer. We have worked with the contractors engaged by management, and agree that conceptually most of the steps they presented are consistent with the recommendations we have made and would endorse. We have not independently conducted field work to confirm the implementation of management's actions to date, and have not yet assessed or tested the effectiveness of the new controls and processes. Our future work programs to check and evaluate management's representations will represent a significant undertaking for the OIG to be incorporated in the work plan for the immediate future.

The summary of the actions provided by County management is displayed below:

Internal Control Review. The County's Office of Internal Audit conducted an internal process and control review (review) of the County's Procure to Pay function focused on specifically-identified aspects of the County's economic development incubator program. This program had been exempted from normal County procurement requirements by virtue of an exemption in place at the time for economic development activities. Under this exemption, the County executed a memorandum of agreement ("Agreement") with the Maryland Economic Development Corporation (MEDCO); an instrumentality of the State of Maryland created by the General Assembly in 1984 to serve as a statewide economic development authority, to encourage, attract and retain business activity and commerce and promote economic development.

The review identified several control deficiencies related to the oversight of County funds disbursed through County programs managed by third party organizations, such as MEDCO; specifically:

- Lack of visibility into the ultimate disposition of funds by vendors responsible for operating a County program where funds are received in advance from the County ("externally-managed" program),
- Insufficient County oversight of department activity related to externally-managed programs, and
- Lack of effective management and control over the population of commodity/payment codes that are used as the basis to identify purchases deemed to be exempt, or otherwise not subject to, the County's procurement regulations.

The review also identified an ineffective segregation of duties that had existed within DED, in which one individual, the DED Chief Operating Officer, had responsibilities for budget formulation, budget execution, vendor engagement and management, and invoice processing and approval. The lack of appropriate segregation of duties – normally expected within individual departments and offices within County Government, increased the potential for one individual to avoid normal checks and balances in County financial processes.

Strengthening Existing Controls and Processes. As a follow-on to the internal control review, the County implemented changes in its existing processes to address and call attention to the control deficiencies identified above. Specifically:

Financial Controls. Finance published two policies (the first a revision to an existing policy) governing accounts payable operations. These policies, summarized below, are designed to build on existing procedures and processes, and enhance enforcement of the existing requirements:

- August 2, 2017 Accounts Payable Policies: Financial Governing Principles and Standards
  - Strengthened segregation of duties within each department by requiring that separate persons authorize the transaction, receive the services, and process the invoice. This critical internal control requirement supports three-way matching between authorizer, receiver, and invoice processor.
  - Required sufficient documentation supporting payments for exempt transactions, and sufficient information supporting basis for procurement exemption.
  - Centralized and improved controls over the Held Check process to require department director level authorization and workflow to identify specific individuals designated to pick up checks.
  - Vendor self-registration – Accounts Payable curtailed practice of accepting vendor information directly from departments. Implemented additional controls and authorizations to register vendors on a limited exception basis.
- April 1, 2018, Accounts Payable Section Policies: Authorized Payment (issued October 2017)
  - Direct payment of invoices (that is, invoices processed without a three-way match and receiving in the system as evidenced by a Purchase Order or Direct Purchase Order) no

longer authorized unless pre-determined on a limited basis to be exempt from this requirement.
    - Authorized payments via the County Purchasing Card (P-Card), Direct Purchase Order, or Purchase Order.
    - The policy ensures purchases are made by authorized individuals, supports segregation of duties, and increases transparency because purchases are reported earlier and/or with more detailed information in the County's financial system.
- Implemented an expanded checklist used by AP supervisor and staff to review payment request packages to increase oversight over payment processing and easily facilitate management review.
- We would note that even prior to the facts of the DED situation being known, in January 2017 Finance implemented automated forensic review of disbursements prior to payments being issued as a means to detect questionable payments.

New Compliance Unit to be Established. Finance is establishing a Compliance Unit by January 1, 2019, responsible for:

- Reviewing and approving department requests to enter into procurement exempt transactions. The purpose will be to validate the exemption or determine whether the request is subject to procurement prior to the acquisition of the goods or services and whether it otherwise complies with County rules and regulations.
- Ensuring direct purchase orders have appropriate support including a legally binding agreement if warranted.
- Performing post-payment audits to ensure payments were properly supported and authorized.
- Analyzing a series of tests run by forensic software that are designed to detect irregular payment transactions such as invoices with questionable amounts, purchases occurring at unexpected times, transactions that may have been designed to avoid procurement thresholds, and other identified fraud risks.

Public Entity Procurements and Procurement Exemptions. A joint effort by Finance, County Attorney, and Procurement resulted in strengthened controls in the following areas:

- Public Entity Checklist – by including all elements required to enter into a procurement transaction with a public entity and ensuring adequate support for the Director of Procurement to authorize a purchase order for the transaction. On April 6, 2018, the County provided guidance and direction to departments concerning use of procurement contracts with public-entities. That guidance emphasized that entering into a non-competitive contract with a public entity cannot be used as a means of circumventing the ordinary contracting requirements and procedures set forth in County Code and in the County Procurement Regulations. Such contracts are, with a few exceptions, subject to the entirety of the County's Procurement laws and regulations; and must be approved as to form and legality by the Office of the County Attorney, have approval by Risk Management as to applicable insurance requirements, and be executed by the Office of Procurement on behalf of the County.
- Revised exempt commodity/payment code list to clarify the legal basis for an exemption, eliminate codes that no longer have a legal basis, and to link the list to relevant Finance and Procurement policies that cross-reference to the list.

New Procedures Governing Agreements. On September 11, 2018, the County issued procedures (Interim Administrative Procedure (AP) 2-4, Agreements between Montgomery County Government and Other Organizations) tightening controls in several areas, including:

- Establishment of a standard review and clearance process for all non-procurement contractual agreements requiring the signature of the Chief Administrative Officer (or designee). Major requirements of this standard clearance process include:
  - Assignment of a unique County identification number (like the requirement already in place for procurement contracts) to facilitate review of payment invoices with the associated agreement.
  - Mandatory review by the Department of Finance (Finance), particularly with respect to agreements involving "advance payment" of funds prior to services being rendered. For agreement involving an advance payment, the AP also requires Finance to determine any specific audit requirements (with resourcing of such audits by the responsible department) that must be in place to protect County interests and ensure appropriate use of funds.
- Establishment of a standard set of required terms and conditions that include
  - Requirement for description of the work to be conducted; and, where applicable, performance measures, deliverables, and a schedule of milestones.
  - Right to audit clause.

Additional Internal Control Reviews. The County also undertook two additional reviews to ensure that situations similar to those found within DED's management of the incubator program were not present in other County departments/programs:

- A review of other purchases under procurement-exempt commodity codes – which found no instances in which a lack of segregation of duties and/or oversight by County personnel resulted in inappropriate payments of County funds to vendors. Changes to require improved documentation were already being implemented as part of the County's actions in response to the DED situation.
- A review of the alignment of financial and program management responsibilities/duties across all County departments and offices – which determined that appropriate segregation of duties was present in all major County departments and programs.

Forensic Audit. At the request of the Chief Administrative Officer, the County Attorney hired and audit firm to conduct a forensic audit of the County's economic development activities, including the incubator program, since 2007. The audit is comprised of two phases. In the first phase of the audit, the auditors determined the amount of County's funds the former DED COO misappropriated from DED. In the second phase of the audit, the auditors determined the amount of County's funds the former DED COO misappropriated through MEDCO and Scheer. In reviewing the incubator program, the auditors analyzed the County's transactions with MEDCO, Scheer, Rockville Economic Development, Inc., and Biohealth Innovation, Inc. (BHI). The forensic audit confirms the amount of misappropriated funds the County had identified during its own internal investigation and reinforces/supports the findings of the County's internal control review conducted earlier this year. The forensic audit also acknowledges the County's efforts to strengthen existing financial management policies and procedures to address gaps or weaknesses in processes and internal controls. The auditors are preparing two reports and that they expect to finalize shortly.

County Manager Training. The County conducted training on October 15, 2018, for all managers concerning their responsibilities to ensure effective internal controls and management oversight of financial transactions, including the importance of appropriate segregation of duties, identification of potential "red flags" of employee fraud and misappropriation of funds, and what to do if such allegations or issues are identified or brought forward as allegations by other employees.

Management of Incubator Program. Finally, the County is in the process of strengthening its oversight and management of the business incubator program by unwinding its relationship with MEDCO. This includes the following:

- Refinanced and assumed MEDCO debt on two County incubators.
- Terminated MEDCO as incubator manager effective December 31, 2018 for the following incubators: Rockville Innovation Center, Germantown Innovation Center, and Silver Spring Innovation Center.
- Contracted with Launch Workplaces, LLC to perform property and portfolio management of the Silver Spring Innovation Center as of September 1, 2018.
- Terminating, effective November 30, 2018, Scheer Partners, MEDCO's subcontracted incubator property manager. Scheer has already discontinued its operations at the Silver Spring Innovation Center. The County will have a property management contract in place by December 1, 2018 for the Rockville and Germantown Innovation Centers.
- Effective November 1, 2018, the County will invoice, collect, and deposit rent/fees from tenants of the Rockville and Germantown Innovation Centers directly into County accounts. After December 1, 2018, the County will directly oversee and account for the financial operations of the Rockville and Germantown Innovation Centers.
- Upon termination of MEDCO and Scheer, accounts held by those third parties will be closed and residual funds remitted to the County.
- The County will contract directly with entities providing economic development services, including BHI.

We would note that immediately following discovery of the misappropriation of County funds, the Department of Finance suspended grant payments to MEDCO and initiated a careful review of projected incubator and related program spending and funds held by MEDCO on behalf of the County, resulting in the following:

- Deferred most of MEDCO's FY18 appropriated grant funding (only disbursed $1.64 million of $3.4 million appropriation).
- Indefinitely suspended all of MEDCO's FY19 appropriated grant funding ($3.6 million).
- Advance repayment to the Maryland Technology Development Corporation (TEDCO) for a four-year liability that otherwise would have been paid by the County through MEDCO.

Evaluation of Factual Findings

Misappropriation of $7.2 Million by the Chief Operating Officer of the Former Department of Economic Development

Background & Environment

The acts of the DED COO that are presented in this report occurred while management oversight for the Business Innovation Network was vested in the Montgomery County Department of Economic Development.[30] Two Directors and an Acting Director led the DED during this period. A third individual who served as DED Director from 1995 through 2006 executed the Management Agreements with MEDCO in June 1998 and April 2006, and subsequently joined Scheer in 2011.

DED's mission was "to develop and implement strategies that will produce business and employment opportunities for residents of the County, expand the County's economic base, enhance the competitiveness of businesses located in the County, and promote the locational advantages of the County." At that time, DED sponsored six programs in the pursuit of its mission:

- ***Marketing and Business Development*** to promote the assets, advantages, and opportunities available for domestic and international businesses.
- ***Business Empowerment*** *to* provide programs and services to small and minority business communities through creative initiatives and partnerships, including existing Business Innovation Network facilities and an expanded network at the Site II future home of the East County Center for Science and Technology (Site II development spun off into a separate *Special Projects* program in FY 12),
- ***Workforce Services*** *to* ensure that the County has a well-prepared, educated, trained, and adaptable workforce to meet the current and future needs of business,
- ***Agricultural Services*** *to* promote agriculture as a viable component of the County's business and economic sector, and
- ***Finance and Administration*** *to* manage and service the departmental administrative functions including fiscal, contract management, strategic planning, and special projects. This program administered the five financing programs under the Economic Development Fund:

[30] On July 1, 2016, economic development activities of the County were ceded away from the County to the Montgomery County Economic Development Corporation, a public-private partnership. At that time, fiscal management responsibility for the Business Innovation Network was vested with the Department of Finance. The Business Innovation Network continued to be funded through MEDCO.

the Economic Development Grant and Loan program,
the Technology Growth program,
the Impact Assistance Fund,
the Micro-Loan Program, and
the Small Business Revolving Loan program.

Montgomery County Business Innovation Centers

Within the oversight of the DED's Business Empowerment activities, the Montgomery County Business Innovation Centers (the Incubator(s)) were established to support the growth and development of biotechnology, information technology, international technology, professional services, and women-and minority-owned businesses. The Incubators provide flexible and short-term lease agreements for lab and office space, as well as other educational, networking, and entrepreneurial development support to the Incubator licensees.

During the period between August 2006 and August 2017, Incubator locations included the Shady Grove Innovation Center (established in 1999; transitioning to the National Cybersecurity Center of Excellence in 2015), the Silver Spring Innovation Center (2004), the Wheaton Business Innovation Center (2006; transitioning to the Incubator Without Walls in FY17), the Rockville Innovation Center (2007), and the Germantown Innovation Center (2008). A Virtual Incubator Program existed during this timeframe, and another incubator adjacent to the US Food and Drug Administration complex in the White Oak area was in the planning phase.

At the commencement of the period of the OIG's misappropriation investigation, the Shady Grove and Rockville Innovation Centers were owned through financing arrangements by MEDCO[31], and the Germantown Innovation Center was in a facility the County leased from the Montgomery College Foundation.

Funding for the operation of the Incubator Program was provided each year through the DED's annual budget and appropriation.[32] Funds for Incubator Program operations were placed with MEDCO pursuant to a series of contracts between the County and MEDCO. MEDCO subsequently employed Scheer as a subcontractor to provide facility management, accounting, and related services for the Incubator Program's locations.

Maryland Economic Development Corporation

A State of Maryland instrumentality, the Maryland Economic Development Corporation (MEDCO) was engaged by the County as the property manager and licensing agent for the Incubator Program. MEDCO qualifies as a public entity under Montgomery County Code. Among other terms within the contract, MEDCO was to:

- Establish Management Accounts for each incubator,
- Provide annual financial reports,

[31] Ownership of the Shady Grove and Rockville centers has since reverted to the County.

[32] Additional funding for other DED activities and programs was received through Non-Departmental Account appropriations for the Economic Development Fund, and through Capital Improvement Program appropriations associated with certain development projects.

- Develop an annual operating budget for County concurrence,
- Maintain, repair, or replace furniture, equipment, and improvements of the incubator facilities, and
- Develop incubator admittance and graduation criteria, screen potential licensees, monitor their progress, and assist with business support.

Scheer Partners Management

Scheer Partners Management, Inc., (Scheer) a for profit commercial office real estate firm, was contracted by MEDCO to provide facility management, accounting, and related services for the Incubator Program, including:

- Deposit revenues from license fees, License Compensation Agreement payments, grant funds, etc. into the MEDCO-established Management Accounts,
- Submit monthly requests to MEDCO for disbursement from the Management Account to cover operating costs and expenses for the maintenance, repair, or replacement of the furniture, equipment, and improvements of the incubator facilities,
- Provide oversight of vendor contracts, and develop Licensee admittance and graduation criteria, screen prospective Licensees, monitor progress, assist with business support,
- Prepare annual operating budget, and provide monthly and annual reports, and
- Staff facility as necessary.

Under typical, effective financial assistance processes such as grant awards, the financial and in-kind assistance goes directly to the performing institution (recipient) who is responsible both for performance and the use of the financial assistance provided in accordance with certain pre-determined grant terms and conditions and with no direct management beyond the funding and limited oversight by the grantee institution.

In the case of the Incubator Programs, intended financial and in-kind assistance did not go directly to the performing institutions under their licensing agreements (the incubator licensees or tenants). Instead, the financial and in-kind assistance was structured to be directly managed by the DED and resources channeled through two intermediaries. The first one, MEDCO, was engaged to manage the Incubator Program. Through financing arrangements, MEDCO owned the properties that housed the Shady Grove and Rockville incubators.

The second intermediary, Scheer, was engaged by MEDCO to provide property management, accounting and other assistance services to the licensees. The Licensees applied through Scheer for the privilege of becoming licensees and obtaining space and services in the incubators. Licensees paid rent for the space and services to Scheer.

DED also provided limited program management to the Incubator Program through assignment of staff to directly support licensees.

Early stage diversion of incubator funds: Payments to the Relative of the DED COO's Spouse, and to a Related Spouse/Relative Owned Business

Between April 2007 and September 2009, the DED COO instructed MEDCO to make $163,000 in payments to the relative (Relative) of the DED COO's wife (Spouse). These payments were drawn upon County funds on deposit with MEDCO, purportedly for the Relative's work on a Feasibility Study related to the Life Sciences Center. We found no evidence to support that the Relative participated in any Feasibility Study.[33] All payments except one were made by check picked up by or delivered to DED COO. One payment was made via wire transfer to a Korean bank. The indicated bank differs from the bank purportedly used by Chungcheongbuk- do for its wire transfer of the Investment/Loan funds to Montgomery County.

Payments Made to the Relative of the DED COO's Spouse **$163,000**

Amount	Date of Evidence	Payor	Charge to	Source of Instructions
	Description of Invoiced Charges			
	OIG Observation			
Relative				
15,000.00	**2 May 2007**	**MEDCO**	**DED**	**e-mail from DED COO**
	Invoice Description:	Payment to Spouse's Cousin for Life Science-CIP Project 789057-MOU on Feasibility Study		
17,500.00	**30 May 2007**	**MEDCO**	**DED**	**e-mail from DED COO**
	Invoice Description:	Payment to Spouse's Cousin for remainder of the CIP 789057 MOU on Feasibility		
27,500.00	**17 Jul 2007**	**MEDCO**	**SGIC**	**e-mail from DED COO**
	Invoice Description:	Payment to Spouse's Cousin for final and closeout payment for the Chungbuk Province under the CIP MOU		
48,000.00	**11 Sep 2007**	**MEDCO**	**SGIC**	**Letter from DED COO**
	Invoice Description:	Payment to Spouse's Cousin for Amendment to CIP 789057 MOU		
55,000.00	**22 Sep 2009**	**MEDCO**	**DED**	**Memorandum from DED COO via DED Director**
	Invoice Description:	Payment to Spouse's Relative for Chungbuk's planning/feasibility study for the Partnership project with Chungbuk		
	OIG Observation: for all payments to Relative	We found no evidence to support that a Feasibility Study had been authorized, nor was there evidence that such a study had been delivered. The DED COO's computer records include documents which do not reflect the $163,000 in income paid by MEDCO to the Relative. We found evidence that the DED COO appeared to have expended funds to an immigration attorney to help modify business, tax, and visa application records to bolster the Relative's E-2 Visa Application.		

During this same period, the DED COO also instructed MEDCO to draw upon County funds on deposit with MEDCO to make a $145,000 loan to a restaurant owned 20% by the Spouse, and 80% by the Relative (Spouse/Relative Business).

33 In the fall of 2008, County Executive Leggett established a Biosciences Task Force "to help develop a strategy that will enable Montgomery County to more effectively leverage its rich asset base and become a global hub for life science research, development and technology commercialization." The Task Force report was issued by the Task Force in December 2009, and feasibility and implementation plans were contracted to the Consultant/BHI CEO during 2010-11.

Payments Made to the Relative of the DED COO's Spouse & Relative/Spouse Business				$145,000
Amount	**Date of Evidence**	**Payor**	**Charge to**	**Source of Instructions**
	Description of Invoiced Charges			
	OIG Observation			
Spouse/Relative Business				
145,000.00	**2 Jun 2008**	**MEDCO**	**GIC**	**e-mail from DED COO**
	Invoice Description:	Prepare [check] against the FY08 sent for the Spouse/Relative Business for $145,000; loan draw 2-[Spouse/Relative Business]		
	OIG Observation:	We found evidence in a Spouse/Cousin Business document we reviewed of a $145,000 amortized intangible asset		

Correspondence we reviewed suggests that the MEDCO payments may have been used to pay for expenses the DED COO incurred to help the Relative obtain an E-2 Investor Visa. An E-2 Visa would have allowed the Relative to remain in the United States for a period of two years, with no maximum limit on the number of extensions that may be granted.[34]

E-2 applicants must demonstrate at least a 50% ownership of a business enterprise or possession of operational control through a management position. Correspondence we reviewed reflects that the Spouse/Relative Business was purchased to provide a bonā fidē business investment that the Relative could claim for E-2 Investor visa application purposes.

The financial documents provided by DED COO to attorneys preparing the E-2 visa application for the Relative reflect a $145,000 fully amortized intangible asset on the balance sheet for Spouse/Relative Business.

For 2007 and 2009, the years that MEDCO payments were made to the Relative, financial documents provided by DED COO to attorneys preparing the E-2 Visa application cause us to question whether the Relative ever received the $163,000 in income.

During this period, DED COO-expended funds appear to have been used to engage an immigration attorney to help the DED COO to modify business, tax, and visa application records to bolster the Relative's E-2 Visa Application.

We found evidence regarding the MEDCO fund disbursements and their use and E-2 Visa application activities within the following e-mail correspondence extracted from the DED COO's computer.

April 30, 2007

The DED COO instructs MEDCO to disburse $15,000 to the Relative, with the address of Chungcheongbuk-do Provincial government, 158, Sangdang-do, for the Life Science-CIP

[34] Per the U.S. Citizenship and Immigration Services, qualified treaty investors and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. There is no maximum limit to the number of extensions an E-2 nonimmigrant may be granted. All E-2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

Project 789057-MOU on Feasibility Study. MEDCO was instructed to send the check to the DED COO's attention.

May 30, 2007

The DED COO instructs MEDCO to disburse $17,500 for the remainder of the CIP 789057 MOU on Feasibility to the Relative. MEDCO was instructed to send the check to the DED COO's attention.

June 6-10, 2007

In a series of messages between the DED COO and a Home Seller negotiating terms to purchase a home at an undisclosed location, the DED COO provides "Following are the pertinent information: / Buyer Name: [Spouse] (my wife) / [Relative] (my wife's [relative])". The DED COO also states, "My wife's relative is coming to USA for child education via invstro [sic, "investor"] visa. To enhance [her/his] chance of receiving the visa, we are making [her/him] a co-owner of the house. My current home is 100% financed and owned by myself only."

June 18, 2007

In an e-mail between two attorneys regarding preparation of a formal sales contract for the purchase of the Spouse/Relative Business, it is indicated that the buyer is "[Relative]", who will sign the contract and provide a replacement earnest money check of $5,000 at execution of the sales contract to replace the check and earnest money provided by the DED COO. The message further states "This process seems redundant and unnecessary, but it will be helpful to secure the Buyer's [Relative's] visa in Korea." The message indicates that the buyer is the Relative, and provides a complete residence address in South Korea.

June 19, 2007

The E-2 Visa application records that the Relative arrived in US from Korea on B1B2 tourist visa.

June 19, 2007

A "Trade Name Application" filed with the Maryland State Department of Assessments and Taxation (SDAT) for the Spouse/Relative Business Holding Company indicates that the Spouse is living at the DED COO's residence address and is an owner. A Business Registration record listing the Spouse as Resident Agent is also filed on this date.

June 27, 2007

The E-2 Visa application records that the Relative departs the US for Korea on B1B2 tourist visa.

July 10, 2007

The DED COO instructs MEDCO to disburse $27,500 to the Relative for the final and closeout payment for the Chungbuk Province under the CIP MOU. The DED COO instructs MEDCO to prepare check c/o the Relative and send the checks to the DED COO's attention.

September 7, 2007

The DED COO instructs MEDCO to disburse $48,000 to the Relative for Amendment to CIP 789057 MOU. The DED COO instructs MEDCO to send checks to the DED COO's attention.

October 3, 2007

The name of the Spouse/Relative Business is registered as trade name according to LexisNexis. LexisNexis indicates that the owner is the Spouse/Relative Business Holding Company using as its business address the DED COO's residence address.

October 13, 2007

The Relative is noted as an owner of the Spouse/Relative Business Holding Company lists the Relative as owner according to an Experian Credit Risk Data Base.

November 30, 2007

A Trade Name registration for the Spouse/Relative Business is filed by the Spouse/Relative Business Holding Company with two officer signatures. The President's signature is illegible. The Vice President's signature appears to be that of the Spouse.

January 22, 2008

The Relative's application for E-2 Visa is rejected by the US consulate office in Korea.

January 23, 2008

An e-mail message from an attorney to the DED COO regarding the E-2 Visa application indicates the US consulate office in Seoul initially rejected the Relative's E-2 Visa, and asks for new information to overcome the "unreasonable presumption that the US consul has in this case". One of the attorney's requests is a letter signed by the Spouse stating that as vice president of the restaurant (of which the Relative is president), s/he has only been able to take the restaurant so far before opening and now needs the Relative's presence.

June 02, 2008

The DED COO instructs MEDCO to disburse loan of $145,000 to the Spouse/Relative Business. The DED COO directs MEDCO to make payment and hold check for the DED COO to pick up. A "Germantown Incubator Accounting" is attached to this message that lists two Community Legacy Loan withdrawals: "less loan draw 1-[a business not affiliated with this investigation]. (80,000) in May"[35], and "less loan draw 2-[Spouse/Relative Business] (145,000) 6/4/2008". The direction also indicated a third payment "less Check to County (15,000) 6/4/2008". The purpose for the loan to Spouse/Relative Business was not evident in documents the OIG has reviewed.

June 11, 2008

The DED COO is contacted by the Relative's attorney's assistant with a request for additional information about the "US company documents in the case of [the Relative]."

September 18, 2008

The Relative's application for a B1B2 Visa is rejected by US consulate office in Korea.

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35 Subsequent testing by Baker Tilly isolated this loan as a questionable transaction that may have benefited the DED COO. Their work determined that an applicant, submitting a loan request under a different corporate name, had received a $60,000 loan from the County that was subsequently repaid or partially forgiven per the terms of the loan. The applicant's name and address were subsequently used on the $80,000 loan application under the name of a different corporate entity whose existence could not be verified. The second corporate entity could not be directly linked to the DED COO.

April 3, 2009

An e-mail from an attorney coaches the DED COO on how to complete E-2 Visa application for the Relative.

September 22, 2009

The DED COO instructs MEDCO to disburse $55,000 to the Relative for activity related to Chungbuk's planning/feasibility study for the Partnership project with Chungbuk Korea. Instruction were given to wire transfer the funds to an indicated South Korean bank account. This bank differs from the bank used by Chungcheongbuk-do to wire transfer funds to the County.

April 8, 2011

An e-mail from DED COO to the Relative's attorney provides the documents the attorney has apparently requested relating to the Relative's E-2 Visa application. Our review of those documents leads us to question if the Relative received the money paid by MEDCO because of the income reported for the relevant years. As indicated in the chart "Payments Made to the Relative of the DED COO's Spouse & Relative/Spouse Business", above, MEDCO Disbursed $55,000 to the Relative on September 22, 2009, $15,000.00 on April 30, 2007, $17,500 on May 30, 2007, $27,500 on July 10, 2007, and $48,000 on September 7, 2007. Another document provided a 2010 balance sheet for the Spouse/Relative Business that reflected an entry of $145,000 as an amortized intangible asset.

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Economic Development Efforts Between Montgomery County and Chungcheongbuk-do Province South Korea

Efforts to foster economic cooperation and develop incubator space sharing arrangements for Chungcheongbuk-do companies in Montgomery County

During the early 2000's, Montgomery County and Chungcheongbuk-do Province, Korea (Chungcheongbuk-do) sought to establish and promote cooperative strategies and processes related to the development, implementation and operation of joint programs and projects to accelerate biotechnology and other high-tech economic development in both regions.

Through a 2004 MOU, each government sought sustained and reciprocal partnership to maximize the potential of the Shady Grove, Germantown, and East County science and technology centers in Montgomery County and the Osong Bio-science Complex in Chungcheongbuk-do.

We found evidence regarding efforts to foster economic cooperation and development and incubator space sharing arrangements for South Korean companies within the following e-mail correspondence extracted from the DED COO's computer.

September 9, 2003

An e-mail to the DED COO from a Chungcheongbuk-do Provincial Official states that it is meaningful that the MOU with Montgomery County will have concluded by the time of the Osong International Bio Symposium scheduled for September - October 2003, and the parties can review the incubator establishment plan and a fruitful exchange of cooperation and projects between Chungcheongbuk-do and Montgomery County then.

February 16 - April 28, 2004

The DED COO exchanges a series of e-mail messages with a Chungcheongbuk-do Provincial government official - discussing efforts to get work on the incubators back on track.

> *OIG Observation:* This individual is reassigned to Montgomery County in February 2010 to become the Provincial liaison to the County, and subsequently is named as manager of the Chungbuk Incubator Fund. Throughout the time period covered by this report, we will refer to this individual as the CB Liaison/CBIF Manager.

April 26,2004

An e-mail to the DED COO from the Chungcheongbuk-do International Trade Chief lays out three points of consideration for a MOU between Chungbuk and Montgomery County, the third point stating a long-term objective of establishing incubators for use by companies that move overseas. Another Chungcheongbuk-do official replies expressing hope that the MOU may get signed during a forthcoming visit in early May. Attached to the e-mail is a draft of the 2004 MOU.

Delay of the East County Life Science Development

Correspondence from April and May 2007 exchanged among the DED COO, the Chungcheongbuk-do Provincial Governor (Governor), and another Chungcheongbuk-do government official - the CB Liaison/CBIF Manager - acknowledged that exploration of opportunities for cooperative development had been delayed in both regions, and that while neither side had been able to meet the intent of the original 2004 MOU, both sides should meet during a forthcoming conference to talk about concrete action steps that should be taken going forward. Follow-up correspondence from another official in Chungcheongbuk-do's Economy and Commerce ministry suggests there may be aggressive ways to create demand for business-to-business exchanges, proposing discussions during a Washington trip the following week, a visit acknowledged in a letter from the County Executive who welcomed "taking the steps necessary to strengthen our economic and business ties."

We found evidence regarding delays in cooperative development within the following e-mail correspondence extracted from the DED COO's County computer.

April 30, 2007

A letter to the Provincial Governor, Woo Taik Chung, from the DED COO acknowledges the Governor's May 11, 2007 visit to Montgomery County. It mentions that staff in the economic development agencies for both the County and the Province had been in contact with each other since 2001 to explore opportunities for cooperative development and resulted in a May 2004 MOU. The letter acknowledges that development delays in both regions occurred, and proposed work on a new understanding during the visit.

May 1, 2007

An e-mail from the CB Liaison/CBIF Manager to the DED COO contains an embedded message. That message acknowledged that neither side had been able to meet the intent of the original 2004 MOU between the County and Chungbuk. It suggests that a new MOU may not be necessary, but the two sides should meet on the sidelines during the forthcoming Bio 2007 conference in Boston MA to talk about concrete action steps that should be taken going forward. The memo announced that the Governor of the Province, Jeong Woo-Taek, the Director of the Korea Won Investment Team, Jeong Soon Jeong, and the current Deputy Director, an individual to be named in September as the CB Exchange Liaison - would attend Bio 2007.

May 2, 2007

E-mail from the CB Liaison/CBIF Manager to the DED COO with attached letter from Jeong Soon, Director general, headquarters for economy and investment, that states regret that more had not happened as a result of the 2004 MOU, noting general economic conditions, and suggests there may be aggressive ways to create demand and that he looks forward to talking with the DED COO about those ideas during a trip to Washington the following week.

July 18,2007

County Executive Leggett sends courtesy follow up letter to Woo Taik Chung, Governor of

Chungcheongbuk-do Province following the Governor's May 11, 2007 visit to the County, which references the 2004 MOU signed by the province and county, and extends opportunity to work toward new opportunities.

August 31, 2007

The DED COO receives an e-mail message from the CB Liaison/CBIF Manager, who advises " I am writing to let you know that I am leaving provincial government to seek new career at National Statistics Office ... I will move to NSO on 10th of September."

September 2, 2007

The CB Liaison/CBIF Manager responds, "As for the new contact, I guess [the CB Exchange Liaison] will be your primary contact." The CB Exchange Liaison confirms that in message on September 3.

September 19, 2007

The CB Exchange Liaison sends e-mail to the DED COO indicating that s/he has been selected to be Chungbuk's liaison with the County and the state. S/he announces anticipated arrival in January 2008.

Repurposing of funds for use by the Small Business Revolving Loan Program

The concept of establishing an incubator to promote Montgomery County as the *SMARTL*ocation for South Korean companies seeking strategic opportunities and presence in North America and to encourage South Korean investment followed an October 2008 Trade mission to Korea comprised of the County Executive, DED staff, and 11 people from federal government and private industry. One of the Key Outcomes reported in the then DED Director's related November 6, 2008 memorandum was that the Chungcheongbuk-do pledged $2 million to be used for the construction of the East County Center for Science and Technology to allow companies selected by Chungcheongbuk-do officials to establish a presence in Montgomery County incubators. In that same memorandum one of the action plans was that DED would finalize the joint incubator development project so that it could be incorporated in the Chungcheongbuk-do budget request for 2010.

Conversations about mutual economic development between Chungcheongbuk-do government officials and the DED COO resumed in late 2009. Correspondence among the executive directors of DED and MEDCO, the DED COO, and another official in Chungcheongbuk-do's Economy and Commerce ministry (Chungbuk Official 2) documents a $2.5 million (₩3 billion Korean Won) Chungcheongbuk-do investment in the County's Incubator Program in exchange for rent-free office and lab space in the Shady Grove Incubator.

From January through March 2010, representatives from the Montgomery County DED, Office of the County Executive (CEX), Office of the County Attorney (OCA), and Department of Finance (DoF) collaboratively developed a revised MOU with Chungcheongbuk-do Province.

The final version of the MOU, entitled "Contribution/Donation Instrument County-Chungbuk" negotiated between the DED COO on behalf of the County and Jung In Sung, his counterpart in the Chungcheongbuk-do provincial government:

- Preserved Chungcheongbuk-do's opportunity to invest in the development of the East County Incubator at some future date when that project became viable,
- Repurposed use of the $2 million commitment to supplement the County's Economic Development Fund Small Business Revolving Loan Program until such time the East County Incubator was viable,
- Provided terms for the collection and use of loan fees and interest, and
- Set forth the conditions for a one-time demand for return of the contributed funds and the unwinding of any existing loans at that time.

Before concluding the MOU development, the OCA Staff Attorney cautioned the Former DED Director, the DED COO, and other Montgomery County officials working on the MOU "if [the MOU] is not factually correct, i.e. if there are any other commitments upon which the $2 million contribution is conditioned, then they must be included in the MOU." At the time of that caution, the DED COO had been negotiating an "Investment and Incubator Space Use Agreement" with his Chungbuk Counterpart, Jung In Sung, for at least five months, and the Former DED Director would allegedly sign, and the DED COO would attest to the document six days later. We found no evidence that the existence of this document was shared with the OCA Staff Attorney even though there were other commitments within this agreement upon which the $2 million contribution was conditioned.

The County Executive signed the final 2010 MOU on March 17, 2010, followed by the Chungcheongbuk-do Provincial Governor on March 23, 2010. The Chungcheongbuk-do Provincial legislature subsequently adopted a budget that included funds for the contribution in 2010.

That MOU, however, did not address a need to create CBIF, the shell company, and there was no apparent legitimate business reason for having done so. Further, we are not aware of any authority that would have been available to the DED to establish either a separate corporate entity or a separate corporate checking account, and we found no documentation from County officials authorizing such actions. If the Former DED Director was aware of and approved the establishment of CBIF as a separate corporate entity, he apparently exceeded his authority.

In subsequent representations to MEDCO, Scheer, and other DED staff, the DED COO stated that the CBIF's purpose relative to the operation of the Incubator Program was purportedly set forth in a March 2010 MOU between Montgomery County and the Chungcheongbuk-do Province.

The Chungcheongbuk-do contribution of $2 million was made to the County in 2010 and later repaid with interest. The MOU set the terms for use of a Chungcheongbuk-do loan to the County as a source of funding for small business loans to private companies expanding in the County. The MOU did not, however, make provision for return of Chungcheongbuk-do's funding before the tenth anniversary of the MOU's execution.

With the exception of small amounts used to create two economic development loans to small businesses, the bulk of those funds remained in the Restricted Donation account of the County government until the full amount received by the County was repaid to the Province. The two loans appeared to bear no relationship to the South Korean Province nor to any bioscience or biotechnology program. The first of the loans was repaid in full before the third monthly installment payment was due. Data in our possession indicated that the second loan was still active at the time the funds were returned to the Korean province, and that the loan was assumed by and was still being repaid to the County treasury.[36]

We found evidence regarding the repurposing of the use of Chungcheongbuk-do's loan to the County within the following e-mail correspondence extracted from the DED COO's computer.

October 8, 2009

A letter from the Former DED Director advises the MEDCO Director that the County has entered into talks about a potential Investment by Chungcheongbuk-do in the Shady Grove Innovation Center. The Former DED Director states the County has been engaging Chungbuk Province, Korea ("CB") since 2004 in various economic development initiatives, and has entered into an MOU with CB in 2005 committing to program exchanges and partnership programs.

The Former DED Director states that "when the CB Governor visited the County in September 2009, [the County] proposed an investment by CB to the County's current incubator facility [Germantown]. During the recent BIOKOREA 2009 mission, [the DED COO] successfully negotiated such investment decision by CB and obtained CB Governor's approval for adopting a three billion won (Korean currency equivalent to $2.58 million at exchange rate of 10/7/09) appropriation in CB's FYIO budget (CB's fiscal year is calendar year)."

January 28, 2010

In an e-mail exchange between the DED COO and the Scheer COO, the DED COO shares "relevant terms (draft stage)" of what would become the "Investment and Incubator Space License Agreement". Notable differences: the Scheer COO draft notes Montgomery County and Chungbuk as the parties, with the final indicates DED in place of the County; the draft provided a 30 year lease for 20% of the net leasable space at SGIC, while the final provides 20% of the space between the SGIC and GIC; the draft provided repayment at the expiration of the 30 year lease, while the final made repayment upon expiration of the agreement; and, the final introduced language that the investment would be placed in the County's Small Business Revolving Loan Program, consistent with a new MOU.

January 29, 2010

E-mail from the OCA Staff Attorney to the DED COO proposes a "Chungbuk Deal Structure based on our meeting yesterday". Terms are more consistent with the MOU that is ultimately developed, but contain many thoughts that do not make it to the MOU or the Investment document.

[36] DoF subsequently reported that the second loan was paid off on December 13, 2017.

February 2, 2010 (@ 1:00 pm)

E-mail message from the OCA Staff Attorney to the DED COO, the Former DED Director, and the Acting County Attorney outlines "the Deal Structure with Chungbuk in accord with our discussions this morning". Terms introduce using the Economic Development Fund (EDF) for deposit of the $2 million to be used for loans. Terms begin to take shape of MOU language.

February 2, 2010 (@ 8:27 pm)

The DED COO presents the concept of the EDF loan fund and foundation terms of the MOU to Jung In Sung, but also addresses 20% space use terms that are ultimately addressed in the investment agreement.

February 22, 2010

E-mail exchange in which the OCA Staff Attorney asks the DED COO to explain what Chungcheongbuk-do believes it is getting out of the deal since the MOU terms appear to be so one-sided toward the County. The DED COO responded citing long work to date to arrive here, that the recent Governor committed to County Executive Leggett that he would invest the money, and then turns the response indicating that if the OCA Staff Attorney is not satisfied, the DED COO can contact Chungbuk to have all the terms the OCA Staff Attorney questioned flipped to be 100% in Chungbuk's favor.

March 2-5, 2010

String of e-mail among Montgomery County DoF, DED, OCA, CEX submitting and reacting to changes with MOU draft.

March 8, 2010 (@10:55 pm)

The OCA Staff Attorney distributes an e-mail to CEX Staff with copies to the OCA Staff Attorneys, the Former DED Director, DED COO, a DoF Staff Member, and the Acting County Attorney, in which he states " see section 17 of the MOU which is specifically intended to make sure that no claims can be based on any representations apart from those contained in the MOU. In particular I do not want to use such words as "investing" which implies certian [sic] legal duties specifically discalimed [sic] by section 11 of the MOU."

March 9, 2010 (@12:38 pm)

In an e-mail, the OCA Staff Attorney transmits to the DED COO, with copies to The Former DED Director, DED COO, a DoF Staff Member, and the Acting County Attorney, a draft of a memorandum to the executive regarding the background and purpose why the executive should sign the MOU. In the message, the OCA Staff Attorney states that ***"if [the MOU] is not factually correct, i.e. if there are any other commitments upon which the $2 million contribution is conditioned, then they must be included in the MOU."*** Included in the Executive memo was the language ***"DED and Chungbuk have discussed various other cooperative matters relating to economic development but no commitments binding or otherwise have been made with Chungbuk respecting the $2 million contribution which are not contained in the MOU and Chungbuk acknowledges and agrees that this is true."*** (OIG emphasis added.)

OIG Observation: The Former DED Director allegedly signed the "Investment and Incubator Space Use Agreement" which clearly make other commitments with Chungcheongbuk-do with respect to the $2 million contribution.

March 9, 2010 (@ 12:58 pm)

The OCA Staff Attorney transmits via e-mail to a member of CEX Staff final drafts of the proposed EDF Law changes, a cover memo from the Former DED Director, and an Executive Approval recommendation memo from the Former DED Director to the Montgomery County Chief Administrative Officer (CAO).

March 9, 2010 (@ 5:14 pm)

In an e-mail memo from DED COO to CEX Staff, and OCA Staff Attorney regarding the Chungbuk MOU, DED COO "Thanks everyone for helping out with creative ideas to make the deal work", listing seven points they agreed should be added to the recital section of the MOU. One point notes that Korea committed to a $2 million investment during the County Executive's visit to Korea in 2008.

The message also discussed a possible change to the law governing the EDF. The CAO suggested that the OCA Staff Attorney approach the Acting County Attorney about the possible set up/use of Fiduciary account or some other type of custodian account in lieu of the change of law.

The changes explored in the message are consistent with terms in the "Contribution/ Donation Instrument County-Chungbuk" dated March 23, 2010.

OIG Observation: The "Instrument" is signed by the same Chungbuk Governor as was addressed in the April 30, 2007 DED COO letter. A December 2, 2010 letter to County Executive Leggett is signed by a different Governor, Lee, Si Jong. Wikipedia indicates Le Si-jong as the present governor, and that Chung Woo Taek was governor from 7/1/2006 through 6/30/2010.

March 11, 2010

Jung In Sung submits to DED COO questions for clarification and suggested changes to both MOU and Investment agreement.

March 12, 2010

The OCA Staff Attorney distributes e-mail to DED COO and a DoF Staff Member, laying out optional terms for the return of contributed funds at various benchmark dates (before 10 years, 11-29 years, after 30 years).

March 15, 2010

The Director of the Department of Economic Development, the Director of the Department of Finance, and an Associate County Attorney (as to form and legality) sign the Contribution/Donation Instrument County-Chungbuk.

March 15, 2010

Jung In Sung advises DED COO that Sung's director has requested an international lawyer to review the documents.

March 15-23, 2010

"Contribution/Donation Instrument / County-Chungbuk" recommended by DED on March 15, 2010, signed by County Executive on March 17, 2010, and signed by the Governor of Chungcheongbuk-do Province on March 23,2010.

March 16, 2010

The final version of the Chungbuk Executive Decision memo that the Former DED Director sends to the CAO (see March 9 @ 12:38 pm) has the same language regarding no other commitments. The transmittal e-mail for the document states that an administrative assistant has "printed it on letter head and put on your chair with the documents that I picked up from EOB."

March 17, 2010

The Montgomery County Executive, Isiah Leggett, signs the Contribution/Donation Instrument County-Chungbuk.

March 23, 2010

The Governor of the South Korean Province of Chungcheongbuk-do, Woo-Taik Chung, signs the Contribution/Donation Instrument County-Chungbuk.

Secondary "Investment and Incubator Space License Agreement" negotiations between the DED COO and Chungcheongbuk-do government officials

The DED COO engaged in separate negotiations over a second document, the Investment and Incubator Space License Agreement (Investment Agreement) with his Chungbuk Counterpart, Jung In Sung, concurrent with the development of the MOU. When we interviewed him, the Former DED Director said he could neither confirm nor dispute the validity of his signature on the document, although he did not recall the document but did acknowledge knowledge of its terms as those he had discussed with the DED COO. We have found no evidence that any other party in County government was aware of this document's existence.

The Investment Agreement addressed terms and conditions related to the allocation of office and lab usage by start-up South Korean biotechnology and high technology firms (Korean Licensees) who sought to establish a US presence at the incubators in exchange for Chungcheongbuk-do's "prepayment" of approximately $2.5 million to the County. The Investment Agreement references the concurrent MOU agreement. The Investment Agreement:

- Sets forth an allocation of 20% of office and lab space at the Germantown and Shady Grove Incubators,
- Establishes the Incubator Program fees that will and will not be offset for Chungcheongbuk-do Licensees from the funds provided to the County by Chungcheongbuk-do, and
- Sets forth the agreement's administration and repayment terms.

We located two October 2008 e-mail messages between the DED COO and a member of DED Staff. In one, the DED Staff member reports "*per your request, I have updated the proposed joint incubator development agreement. I updated some dates and years and highlighted the ones I am not very sure of. Were you able to find the Korean version of the agreement?*" In the second, the same Staff Member reports "*I am still pouring over the Korean version of the joint incubator development agreement. Still on page 11. I was told that Mr. Chung from Chungbuk would like to see the agreement sometime soon so that he could vet it to Chungbuk staff before his scheduled trip to the U.S. in November. Given that I am moving along at a snail's pace, I don't think I can get it ready for him by COB tomorrow. Shall I send him the English version first? On a related note, the paragraph you would like to insert reads as follows: 'If Chungbuk desires to place its chosen companies before the completion of the Incubator, the County shall place these companies in any of the County's existing incubators, provided that a vacancy exists in these incubators.' Let me know if you are fine with this.*" The referenced document appears to contain elements from both the MOU and the second Investment Agreement, and precedes Montgomery County officials' development of the 2010 MOU. This document appears to have been updated from an earlier document, but it is unclear if it relates to the "concept of the 2004 investment" terms and MOU development.

Between November 2009 and February 2010, the DED COO and his Chungbuk Counterpart, Jung In Sung, exchanged multiple e-mail messages negotiating terms and conditions for Chungcheongbuk-do's investment in exchange for prepaid office and lab space in the Montgomery County incubators, and interest to be earned on that investment. While these terms were not included in the 2010 MOU, they are consistent with representations the DED COO made to the MEDCO Director and Scheer COO about the County's agreement with Chungcheongbuk-do, and the cancellation and repayment terms were those insisted upon by Chungcheongbuk-do and followed by the DED COO upon dissolution of the MOU 4 years later.

We found evidence regarding negotiations between the DED COO and his Chungbuk Counterpart, Jung In Sung, and other Chungcheongbuk-do Provincial officials within the following e-mail correspondence extracted from the DED COO's computer.

November 19, 2009

In an analysis paper to Jung In Sung, the DED COO provides talking points and discusses economic opportunity that could result from Chungbuk investment in Montgomery County. The analysis discusses a 3 billion Korean Won (KRW) investment, the space it could secure in the SGIC, and a revenue split that could follow. These terms lay the foundation for the "Investment and Incubator Space License Agreement" to follow later.

November 26, 2009 (@8:19 pm)

Jung In Sung provides a counter analysis to the DED COO, supporting that the net present value of 3 billion KRW would be insufficient to lease the proposed 20% incubator space for 30 years, and counters that 24.3 billion KRW should be considered.

November 26, 2009 (@9:02 pm)

Jung In Sung sends an additional analysis to the DED COO asserting that even if Montgomery County does not get paid [interest payments] and that it may not feel that there is benefit, it will benefit from the 3 billion KRW placement and the Korean companies that will be drawn to Montgomery County.

December 1, 2009

Jung In Sung follows up on the November 26, 2009 benefit assertion with an in-depth analysis prepared by Daejoo Accounting Corporation, a BDO affiliate.

January 12, 2010

Jung In Sung reports that the concept of the 2004 investment has "changed a lot and I think I need to revise the contract a lot"[37] and references looking at the old documents. Jung In Sung states there should be no revocation clause, the old termination language was one-sided and that Chungbuk should get some consideration, and closes promising to forward additional thoughts.

January 14-21, 2010

In an exchange of e-mail between the DED COO and the MEDCO Director, the DED COO lays out key terms of Chungbuk's $2.5 million investment whereby 1.) Chungbuk places $2.5 million in the Shady Grove Innovation Center or County Incubator Network, 2.) in exchange, Chungbuk receives access to space use rights for 20% of SGIC space, 3.) at the end of 30 years, the County returns the investment without interest due, and 4.) Korean companies occupying the space will only pay for incidental expenses. The DED COO makes arguments for how this is a win-win deal and steps through financial representations.

> *OIG Observation:* The Former DED Director allegedly signed the "Investment and Incubator Space Use Agreement" which clearly make other commitments with Chungcheongbuk-do with respect to the $2 million contribution. These terms are not within the MOU developed and reviewed by County, rather they are in the Investment and Incubator Space Agreement that was negotiated between the DED COO and his Chungbuk Counterpart, Jung In Sung. We only located evidence of these terms being shared with the MEDCO Director and the Scheer COO.

The MEDCO Director responds asking the DED COO what charges can be assessed against the South Korean companies, and outlines a scenario to move the $2.5 million through Shady Grove to the Rockville incubator to pay down the Rockville loan.

January 24, 2010

The DED COO submits considerations for contract and possible timing to Jung In Sung. The DED COO further states that "As a result of the current conclusion in the form of prepayment of long-term rent Investment contract, I think we need to think a bit more about whether to call it a long term lease."

January 26, 2010

The MEDCO Director sends an e-mail to the DED COO raising concerns about the proposed use of SGIC space by Chungcheongbuk-do companies.

January 28, 2010

E-mail exchange between the DED COO and the Scheer COO in which the DED COO shares excerpts of "relevant terms (draft stage)" that would become the "Investment and Incubator Space License Agreement". Notable differences: the Scheer COO draft notes Montgomery

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[37] "Google Translate"© Interpretation Note: Quotation is the English translation of a Korean language document.

County and Chungbuk as the parties, with the final indicates DED in place of the County; the draft provided a 30 year lease for 20% of the net leasable space at Shady Grove Innovation Center (SGIC), while the final provides 20% of the space between the SGIC and the Germantown Innovation Center; the draft provided repayment at the expiration of the 30 year lease, while the final made repayment upon expiration of the agreement; and, the final introduced language that the investment would be placed in the County's Small Business Revolving Loan Program, consistent with a new MOU.

February 2, 2010 (@ 8:27 pm)

The DED COO presents a concept of the EDF loan fund and foundation terms of the MOU to Jung In Sung, but also address 20% space use terms that are ultimately addressed in the investment agreement.

February 3, 2010

Jung In Sung questions "I would like to point out that the documents Could it be sign by the county governor? Or signed by the Economic Development Bureau as an annex to the agreement."[38]

March 1, 2010

The DED COO transmits discussion drafts of the MOU and the Investment and Incubator Space Use Agreement to Jung In Sung. No other individuals are copied on the e-mail transmittal.

This marks the first introduction of the "Investment and Incubator Space Use Agreement" in any digital evidence reviewed by the OIG.

March 8, 2010 (@ 9:09 pm)

The DED COO transmits via e-mail, using a personal Yahoo account, to Jung In Sung the County's final proposed MOU and Investment and Incubator Space Use Agreement in English and Korean. The DED COO confirms a prior telephone conversation explaining "the Memorandum of Understanding only seeks to attract investment from Chungbuk in isolation from the incubator. At the same time, it is a convenient way to repay the investment to Chungbuk after the end of the agreement period."

March 9, 2010 (@12:38 pm)

In an e-mail, the OCA Staff Attorney transmits to the DED COO, with copies to the Former DED Director, DED COO, a DoF Staff Member, and the Acting County Attorney, a draft of a memorandum to the executive regarding the background and purpose why the executive should sign the MOU. In the message, the OCA Staff Attorney states that ***"if [the MOU] is not factually correct, i.e. if there are any other commitments upon which the $2 million contribution is conditioned, then they must be included in the MOU."*** Included in the Executive memo was the language ***"DED and Chungbuk have discussed various other cooperative matters relating to economic development but no commitments binding or otherwise have been made with Chungbuk respecting the $2 million contribution which are***

[38] "Google Translate"© Interpretation Note: Quotation is the English translation of a Korean language document.

not contained in the MOU and Chungbuk acknowledges and agrees that this is true." (OIG emphasis added.)

> *OIG Observation:* The Former DED Director allegedly signed the "Investment and Incubator Space Use Agreement" which clearly make other commitments with Chungcheongbuk-do with respect to the $2 million contribution.

March 11, 2010

Jung In Sung submits to DED COO questions for clarification and suggested changes to both MOU and Investment agreement.

March 14, 2010

Jung In Sung returns MOU and Investment Agreement reflecting Korean changes.

March 15, 2010

The "Investment and Incubator Space License Agreement" is purportedly signed by the Former DED Director and attested by DED COO. The date indicated in the notary is the only evidenced date on document, although the notary seal itself does not appear to be valid.

March 15, 2010

Jung In Sung advises DED COO that Sung's director has requested an international lawyer to review the documents.

March 15-16, 2010

In an e-mail string, the MEDCO Director asks the DED COO for an outline of the deal with Korea, asking if we need to work out details of final deal before accepting the money. The DED COO responds no, because the bulk of the fund is to be used for the EDF, and only a portion for incubator costs. The DED COO states the concept is similar to the earlier presentation, and describes terms in the Investment Agreement although misstating that only 10% of the incubator space will be used by the Korean companies. The DED COO also states that $420-$500,000 that Chungbuk will be sending in will be used to buffer the cashflow shortage.

Funding from Chungcheongbuk-do Province, Diversion of Incubator Program Funding to the Chungbuk Incubator Fund LLC, and Analysis of Accounting Controls

In consideration of its obligations under the March 2010 Investment and Incubator Space License Agreement (Investment Agreement), Chungcheongbuk-do contributed 3 billion Korean Won (₩3,000,000,000 - the equivalent of $2,508,895.82) to the County in 2010.[39] Correspondence we reviewed indicates that $177,462 was paid on March 23, 2010. The Investment Agreement instructed that that payment be made to a custodian bank indicated as

[39] The March 2010 Memorandum of Understanding that served as the operative document for Montgomery county officials provided for a $2,000,000 commitment by Chungcheongbuk-do Province.

"KB".[40] The same correspondence indicated that $2,150,000 was paid to the County on August 31, 2010. This amount was later repaid, with interest, by the County. Montgomery County posted receipt of the funds to the Restricted Donations general ledger account, stating that the Chungcheongbuk-do loan to the County was a source of funding for small business loans to private companies expanding their business in the County. The correspondence also identified a final Chungcheongbuk-do payment of $181,433.53 on September 15, 2010. We found evidence that this payment was wired to an account of the CBIF.

A Rockville-based Certified Public Accountant (Rockville CPA) filed Articles of Organization with the SDAT to establish the shell company CBIF in July 2010. The Rockville CPA was named as CBIF's registered agent, and the individual appointed by the Chungcheongbuk-do Provincial Governor to serve as the Province's representative in the County (CB Liaison/CBIF Manager) was named as a Member of the CBIF. In the Articles of Cancellation filed with SDAT in August 2014, the DED COO is also identified as a member of CBIF. SDAT filing records also indicate that CBIF was reopened in June and then cancelled in December 2015.

We found no evidence that the County, MEDCO, or Scheer entered into any management agreement or other contractual arrangement with CBIF. We were advised that payments to the CBIF were deposited to a Bank of America business checking account[41] established by the DED COO, the Rockville CPA, and the CB Liaison/CBIF Manager, and evidence confirms that the DED COO had signing authority to draw checks upon that account. In September 2010, Chungcheongbuk-do transferred $181,433.50 via wire transfer directly to this account as the final installment due to the County under the Investment Agreement.

Concurrent with the County's receipt of funds from Chungcheongbuk-do, the DED COO commenced to divert funds from MEDCO, Scheer, and Montgomery County to the shell company, purportedly for the CBIF to make rents payable for Korean incubator licensees to the Incubator Program per the terms of the MOU. The terms of the MOU did not provide for these rent payments. The Investment Agreement solely negotiated between the DED COO and his Chungbuk Counterpart, Jung In Sung, did make provision for such rent payments. Although the CBIF Counterpart was led to believe the Investment Agreement was a bonā fidē county contract, there was no evidence that we located to indicate that any other individual within Montgomery County was aware of or participated in the negotiations with the sole exception of the Former DED Director, who was purportedly the County official who executed the agreement.

From August 2010 through February 2016, the CBIF received twenty-one payments totaling $6,743,453 from Montgomery County, MEDCO, and Scheer:

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[40] Internet search for the phrase "bank KB" returned the name of the Korean bank "KB Kookmin Bank". [MC-CB 6(a)] On February 18, 2010, the DED COO contacted a "Ms. Kim" inquiring about an "Account opening as a foreign government and/or as foreign national, and related wire transfer." The domain for the e-mail address is linked to the KB Kookmin Bank, whose website lists banking offices in Seoul. [MC-CB 39] The wire instruction indicated a Kim Do Saeng as the account holder for the KB account.

[41] The use and disposition of funds have been the subject of the investigation by the United States Department of Justice and the Office of the State's Attorney for Montgomery County Maryland. See Appendix E.

Payments Made to Chungbuk Incubator Fund LLC					**$6,743,452**
Amount	Date of Evidence	Payor	Charge to	Source of Instructions	MC Commodity
	Description of Invoiced Charges				
	OIG Observation				
56,000.00	**1 Aug 2010**	**Scheer**	**GIC**	**Letter from DED COO**	**n/a**
	Invoice Description:			Annual payment related to the County's partnership MOU with Chungbuk Province Korea	
150,000.00	**8 Nov 2010**	**MontCo**	**DED**	**Letter from Chungbuk Exchange Staff**	**Econ. Dev. Partnership**
	Invoice Description:			Disbursement from Chungbuk Fund for arriving companies	
50,000.00	**2 Feb 2011**	**MEDCO**	**GIC**	**Letter from DED COO**	**n/a**
	Invoice Description:			Advanced Rent Payment for Incubator Companies from Chungbuk Korea	
200,000.00	**1 May 2011**	**Scheer**	**GIC**	**e-mail from DED COO**	**n/a**
	Invoice Description:			No description of invoiced charges provided	
800,000.00	**21 Jul 2011**	**MontCo**		**CBIF Invoice**	
	Invoice Description:		**GIC**	$680,000 FY12 GIC Montgomery County Annual Grant	**Rent/Leases**
	OIG Observation:			FY12 Montgomery College rent payments of $148,608.43 paid by Montgomery County on 9 & 11 Nov 2012, and $242,163.47 by Scheer Partners on 23 May 2012	
	Invoice Description:		**SGIC**	$120,000 FY12 SGIC Montgomery County Annual Grant	**Rent/Leases**
	OIG Observation:			A May 23, 2012 DED COO e-mail indicates the FY13 SGIC grant will be $$270,000. The OIG found no evidence of FY12 SGIC grant payments to MEDCO or Scheer.	
138,980.63	**8 Mar 2012**	**MontCo**	**GIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:			FY12 GIC Montgomery County Annual Grant: -2nd and final lease payment	
	OIG Observation:			FY12 Montgomery College rent payments of $148,608.43 paid by Montgomery County on 9 & 11 Nov 2012, and $242,163.47 by Scheer Partners on 23 May 2012	
130,000.00	**11 May 2012**	**MontCo**	**SGIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:			FY12 Shady Grove Incubator	
	OIG Observation:			A May 23, 2012 DED COO e-mail indicates the FY13 SGIC grant will be $$270,000. The OIG found no evidence of FY12 SGIC grant payments to MEDCO or Scheer.	
840,000.00	**13 Jul 2012**	**MontCo**	**GIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:			FY13 Germantown Incubator Grant	
	OIG Observation:			A May 23, 2012 DED COO e-mail indicates the FY13 GIC grant will be $500,000. FY13 Montgomery College Rent 1st Installment of $153,650.65 was paid by Montgomery County on 28 Dec 2012	
200,000.00	**1 May 2013**	**Scheer**	**GIC**	**e-mail from DED COO**	**n/a**
	Invoice Description:			GIC Rent Payment	
	OIG Observation:			FY13 Montgomery College Rent 2nd Installment of $363,755.62 was paid by Montgomery County on 24 May 2013	
150,000.00	**1 Jun 2013**	**Scheer**	**WIC**	**oral instruction from DED COO**	**n/a**
	Invoice Description:			FY14 Rent - WBIC	
	OIG Observation:			FY14 Westfield (Wheaton Landlord) lease payment of $268,675.44 was paid by Montgomery County on 1 July 2013	

Payments Made to Chungbuk Incubator Fund LLC - ***continued*** **$6,743,452**

Amount	Date of Evidence	Payor	Charge to	Source of Instructions	MC Commodity
	Description of Invoiced Charges / *OIG Observation*				
840,000.00	**5 Jul 2013**	**MontCo**	**GIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:	FY14 GIC Grant			
	OIG Observation:	The OIG found no evidence of outstanding GIC rent payments for this period			
149,130.63	**1 Nov 2013**	**Scheer**	**GIC**	**e-mail from DED COO**	**n/a**
	Invoice Description:	FY14 GIC Rent first payment from GIC account			
	OIG Observation:	FY13 Montgomery College Rent 2nd Installment of $149,130.63 was paid by Montgomery County on 12 Dec 2013			
120,000.00	**1 Mar 2014**	**Scheer**	**GIC**	**e-mail from DED COO**	**n/a**
	Invoice Description:	GIC's FY14 second and last rent payment			
	OIG Observation:	FY14 Montgomery College Rent 1st Installment of $366,630.63 was paid by Montgomery County on 20 May 2014			
42,336.00	**1 Jun 2014**	**Scheer**	**GIC**	**e-mail from DED COO**	**n/a**
	Invoice Description:	Payment due to Chungbuk and close the partnership			
81,500.00	**26 Jun 2014**	**MontCo**	**SGIC**		**Econ. Dev. Partnership**
	Invoice Description:	WHIC Licensee Financial Support: Incidental Expenses, Miscellaneous Impact Assistance			
	OIG Observation:	Incidental & Miscellaneous Impact soft landing payments totaling $624,111 were made to WHICH licensee by Scheer Partners from July through December 2014.			
246,521.00	**1 Jul 2014**	**Scheer**	**GIC**	**e-mail from DED COO**	
	Invoice Description:	Return of Chungbuk's Investment to Montgomery County Final Payment #3			
	OIG Observation:	We located evidence of a $505,415.98 payment to Chungcheongbuk-do by a party other than Montgomery County, Scheer, or MEDCO. This amount plus funds wired by Montgomery County equals the $2,508,895.82 amount originally disbursed by Chungcheongbuk-do per the MOU.			
970,000.00	**8 Jul 2014**	**MontCo**	**GIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:	FY15 GIC Grant - $840,000; FY15 Mentorship Program for Life Sciences - $130,000			
	OIG Observation:	FY15 Montgomery College rent payments of $369,435.62 paid by Montgomery County on 14 Jun 2015, and $146,955.63 by Scheer Partners on 1 May 2015			
521,484.00	**5 Aug 2015**	**MontCo**	**GIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:	GIC 2015-2016 Annual Rent from Montgomery County Grant Funds; $514,461 Annual MCRA Fee: $7,023			
	OIG Observation:	FY16 Montgomery College rent payments of $369,730.63 paid by Montgomery County on 1 Jun 2016, and $144,730.62 by Scheer Partners on 25 April 2016			
360,000.00	**12 Oct 2015**	**MontCo**	**GIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:	GIC 2015-2016 Final Payment Montgomery County Grant Funds; $360,000 Annual MCRA Fee: $0 ($7,023 paid in July 2015)			
	OIG Observation:	FY16 Montgomery College rent payments of $369,730.63 paid by Montgomery County on 1 Jun 2016, and $144,730.62 by Scheer Partners on 25 April 2016			
315,000.00	**20 Nov 2015**	**MontCo**	**SGIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:	SGIC (NCCoE) Mortgage FY16 2nd and Final Payment Montgomery County Grant Funds: $235,000 R&M Reserve: $80,000			
	OIG Observation:	No documentation related to this transaction located within available records.			

Payments Made to Chungbuk Incubator Fund LLC - *continued*					$6,743,452
Amount	Date of Evidence	Payor	Charge to	Source of Instructions	MC Commodity
	Description of Invoiced Charges				
	OIG Observation				
382,500.00	**29 Feb 2016**	**MontCo**	**SGIC**	**CBIF Invoice**	**Rent/Leases**
	Invoice Description:		NCCoE 2016 First Half payment Montgomery County Grant Funds: $342,000 R&M Reserve: $40,000		
	OIG Observation:		No documentation related to this transaction located within avialable records.		

Invoices submitted by the CBIF provided an appearance of legitimate Incubator Program expenditures - in most cases for the fiscal year operating grant funding or incubator facilities lease payment. An effective control system within DED should have preemptively detected that the 12 payments made by Montgomery County and 18 payment made by either MEDCO or Scheer, all payable to CBIF, were improper.

The Former DED Director had not segregated duties among multiple individuals in the department. The DED COO negotiated an agreement with, and arranged for the receipt of funding from Chungcheongbuk-do province. The DED COO determined the amount of funding needed for the Incubator Program and then instructed MEDCO and Scheer to create and submit invoices to the County for payment of those amounts. The DED COO approved both the accounting system processing coding and payment of the invoices, and instructed that the payment check be held for pick up, often by himself. Financial reports should have alerted management to payments to CBIF, however the DED COO was the individual who received and reviewed the financial reports provided to the DED. The insertion of another individual in any of these activities would have made it more difficult for the DED COO's acts to go undetected.

The payments made by Montgomery County to CBIF were submitted for processing with an exempt commodity code of Rental/Lease payment or Economic Development Partnership payment indicated. Submission of an invoice coded with an exempt commodity code signified that the transaction was not subject to or exempt from the procurement regulations. Had the Former DED Director designed and implemented control activities for the proper execution of transactions, the validity of a DED COO-approved invoice for the payment of Incubator Program grant funding to the CBIF that bore indication of a Rental/Lease exempt commodity code should have been questioned.

The DED COO submitted items for payment by Montgomery County with little or no scrutiny. The DED COO approved the invoices, ensuring that the approval authorization contained accounts payable (A/P) "commodity" coding to indicate the invoice should be treated as a lease or rent. During this period, annual rent payments due to the lessor, Montgomery College, ranged between $481 - $517 thousand, while annual funding invoices submitted by CBIF ranged from $130-$970 thousand. We found evidence that lease payments during this period were made either by the Montgomery County or by Scheer. We also observed that the timing of the CBIF invoices closely preceded the actual payment date of the rent or operating grant funding.

There was no evidence that we located to indicate that any individual within the A/P approval and payment process detected or questioned the submission of duplicate lease payment invoices for the periodic rents - payable to CBIF and the other to Montgomery College (the lessor of the Germantown Innovation Center).

As the financial manager for DED, he would have known that invoices that had been designated with the "Rent/Lease" exempt commodity payments code would have likely, at that time, been processed by DoF Accounts Payable Section without question or challenge for the underlying vendor agreement that supported the payment request submission (even though that agreement did not exist).

Decentralized management relies on the design and execution of effective controls at departmental levels, and the existence of centralized oversight and monitoring functions. Budget formulation, budget execution, vendor engagement and management, and invoice processing and approval are responsibilities normally expected to be implemented and managed with appropriate segregation of duties within individual departments and offices within County Government. Prior to August 2017, segregation of duties under the County's decentralized management concept was expected but not required, nor was there an external system of enforcement.

We were advised that during the period between August 2006 and August 2017, DoF did not have a formal A/P payment policy or procedure that required A/P to review of exempt commodity coding related to A/P payment transactions that required A/P to determine the accuracy of the commodity code used or whether sufficient support existed. We understand that training material and individual guidance memos were posted on the intranet site but not formalized in official policy or procedure documents.

We found evidence regarding the disbursements to the CBIF within records provided by MEDCO, Scheer, Montgomery County, and in the following e-mail correspondence extracted from the DED COO's computer.

September 19, 2007

The CB Exchange Liaison sends an e-mail to DED COO indicating that s/he has been selected to be Chungcheongbuk-do 's liaison with the County and the state. S/he announces anticipated arrival in January 2008.

October 10, 2007

The CB Exchange Liaison sends e-mail to DED COO containing a letter from Governor Woo-Taik Chung announcing that he has named The CB Exchange Liaison to be Chungcheongbuk-do's liaison with the County and the state.

Evidence was located that announced both individuals (the CB Liaison/CBIF Manager and the CB Exchange Liaison) had been named as the Province's representative to the County, but we found no documents to support the Province's request for disbursement of funds to these individuals.[42]

November 3, 2009

The DED COO instructs MEDCO to disburse $81,200 to the CB Exchange Liaison for "High Tech Medical Complex Feasibility & Partnership".

December 3, 2009 (@ 7:15 pm)

Jung In Sung e-mails an update about the provincial assembly's budget deliberations relating to the investment in Montgomery County, and requests that the DED COO provide additional information requested by the assembly.

December 3, 2009 (@ 11:52 pm)

The DED COO provides the requested additional information.

December 17, 2009

Jung In Sung reports to the DED COO that "[the proposed placement] passed the parliament safely... However, for the rent portion still under discussion."[43] The message presents four alternative arrangements, stating a preference for the third.

January 10, 2010

Jung In Sung reports to the DED COO that "we secured a budget of 3 billion won" and "must present the outcome of negotiations with the county government".[44]

February 2, 2010 (@8:25 am)

E-mail from CB Exchange Liaison, now serving as Assistant Director, Chungbuk International Cooperation and Trade Division, to a DED Staff Member announcing that the Chungcheongbuk-do Governor has appointed the CB Liaison/CBIF Manager to serve as the Province's representative to the County for a 2-year period beginning at the end of February.

February 18, 2010

DED COO contacts a "Ms. Kim" inquiring about an "Account opening as a foreign government and/or as foreign national, and related wire transfer." The domain for the e-mail address is linked to the KB Kookmin Bank, whose website lists banking offices in Seoul.

March 18,2010

A letter is sent to MEDCO requesting a $20,000 check payable to the CB Liaison/CBIF Manager, 111 Maryland Pike, Suite 800, Rockville, MD 20850 for the partial funding of foreign exchange staff. Requested by DED COO & approved by the Former DED Director.

> *OIG Observation:* 111 Maryland Pike does not appear on Google, Bing, or Map Quest online maps, nor is there such a property listed in SDAT. 111 Maryland Avenue is the address of the Rockville City Hall used for another check requested in this letter. 111 Rockville Pike,

[42] In a November 25, 2007 letter to Woo Taik Chung, DED Director 2 states that while the County would provide office and support, it would not pay salary, living expenses and incidental for the exchange staff. DED Director 2 indicated that the County would also provide "seed money of $20-30,000 to begin implementing partnership initiatives".

[43] "Google Translate"© Interpretation Note: Quotation is the English translation of a Korean language document.

[44] Ibid.

Suite 800 was the address for the Montgomery County Department of Economic Development at the time of the letter.

March 23, 2010

The Governor of the South Korean Province of Chungcheongbuk-do (Chungbuk Governor) signs the Contribution/Donation Instrument County-Chungbuk.

March 23, 2010

As disclosed in a later June 26, 2014 e-mail from the DED COO to Sang Sook Kim, Chungcheongbuk-do province official, provides indication that a first contribution of ₩200,000,000 ($177,462.29) was paid to Montgomery County. No County, MEDCO, or Scheer records were located that could confirm the posting of any funds received. This timeline would have been during the period that the Montgomery County used the Financial Accounting and Management Information System (FAMIS) financial systems.

April 28, 2010

$90,000 payable to the CB Liaison/CBIF Manager, 111 Maryland Pike, Suite 800, Rockville, MD 20850 for Advance funding for Chungcheongbuk-do's exchange staff in DED (to be restored in June 2010, upon receipt of Chungcheongbuk-do 's fund) was requested by DED COO & approved by the Former DED Director.

July 26, 2010

In an e-mail to Jung In Sung and Yoon Soon In, the DED COO notes the delay with Bank of Korea processing the disbursement, and attaches two letters. One letter is the County's request that Chungcheongbuk-do wire the funds at the earliest possible time. The second is a draft letter for Kim Kyoung-Yon, Director General of the Economic and Trade Bureau, to send to the Former DED Director (who was not cc'd on the e-mail). That letter acknowledges receipt of the Montgomery County fund disbursement request, and the appointment of Seung Uk Hong as Chungcheongbuk-do's agent under the terms of the MOU. It also requests that all payment to Chungcheongbuk-do under the MOU be made to "Chungbuk Incubator Fund LLC" and remitted to Hong. The Director General instructs that $150,000 of the forthcoming $2.15 million be paid to CBIF.

OIG Observation: The routing of the DED COO-drafted letter through the Director General would have provided the Former DED Director with the appearance that the introduction and use of CBIF was a directive of Chungcheongbuk-do provincial officials.

August 1, 2010

A letter from the DED COO instructed Scheer to pay $56,000.00 to the CBIF for the annual payment related to the County's partnership MOU with Chungcheongbuk-do Province Korea. This item was paid by Scheer/MEDCO check # 1381 on August 4, 2010, and posted against the Germantown Innovation Center operating funds maintained by Scheer.

August 31, 2010

The DED COO receives notice from the DoF that Montgomery County has received a $2,150,000 wire from the Chungcheongbuk-do Provincial Governor.

September 9, 2010

The DED COO sends a letter to Director General Kim Kyoung-Yong acknowledging receipt of the $2.15 million wire, and requesting that the balance of 211,185 KRW be wired under the Incubator License Agreement to the CBIF, fulfilling Chungbuk's obligation to disburse 3,000,000 KRW as required under the agreement.

September 10, 2010

Jeon Kwang Ho of the Chungcheongbuk-do provincial government, and Yoon Seon-In's successor, advises the DED COO of an error in the invoice for the additional wire. The correction points out that three payments were made by Chungcheongbuk-do - a 200,000,000 KRW payment, a 2,588,815,000 KRW, and the last invoiced payment of 211,185,000 KRW. Jeon requests that DED COO submit a corrected invoice. That corrected invoice is the one attached to the September 9, 2010 letter to Kim Kyoung-Yong, above. At 1:12 am Jeon follows up requesting that the invoice be accompanied by a letter of request to the head of the agency and the September 9, 2010 letter to Kim Kyoung-Yong, above.

September 15, 2010

The CBIF account established by DED COO/Rockville Accountant/CB Liaison/CBIF Manager at Bank of America receives $181,433.50 via direct wire transfer to the account noting origination by Chungcheongbuk-Do Province

September 20, 2010

In an e-mail exchange with the DED COO, the MEDCO Controller requests copies of the agreements in place with Korea. DED COO responds that because of the diversion of the funds to the EDF, "there is no 'hard' agreement that covers the Incubator usage. "However, "there is a 'soft' agreement that we will place a qualified Chungcheongbuk-do companies into Germantown Innovation Center and charge the reduced fee (agreed as CAM fee set at around 60-70% of the prevailing rent)."

October 8, 2010

A letter from the CB Liaison/CBIF Manager instructed Montgomery County to pay $150,000.00 to the CBIF for a disbursement from the Chungbuk Fund for support of arriving companies from Chungcheongbuk-do. This item was paid by Montgomery County check # 1729041 on November 8, 2010, and posted against the accounting ledgers of the DED Departmental accounts. The payment approval was coded to use a commodity code for Economic Development Partnership. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up.

February 1, 2011

The DED COO via the Former DED Director sent a letter to the MEDCO Director purportedly with a $100,000 check attached, instructing that $50,000 be deposited with the Germantown Innovation Center to offset Chungcheongbuk-do licensees, and the remaining amount disbursed to the CBIF.

February 2, 2011

A memorandum from the DED COO instructed MEDCO to pay $50,000 to the CBIF. This item was paid by MEDCO check # 14378 on February 2, 2011, and posted against the Germantown Innovation Center operating funds.

May 1, 2011

An e-mail from the DED COO instructed Scheer to pay $200,000 to the CBIF. This item was paid by Scheer/MEDCO check # 1561 on May 17, 2011, and posted against the Germantown Innovation Center operating funds maintained by Scheer.

July 21, 2011

An $800,000 payment was paid by Montgomery County check # 1797972 on July 21, 2011 that consolidated two invoices. A $680,000 invoice was submitted to Montgomery County by CBIF for the Germantown Innovation Center's FY12 Montgomery County Annual Grant. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. This item paid by was posted against the accounting ledgers of the Germantown Innovation Center.

> *OIG Observation:* FY12 Montgomery College rent payments of $148,608.43 were paid by Montgomery County on 9 & 11 Nov 2012, and $242,163.47 by Scheer on 23 May 2012"

Another $120,000 invoice was submitted to Montgomery County by CBIF for the Shady Grove Innovation Center's FY12 Annual Grant. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. This item was posted against the accounting ledgers of the Shady Grove Innovation Center.

> *OIG Observation:* A May 23, 2012 DED COO e-mail indicates the FY13 Shady Grove Innovation Center grant will be $270,000. The OIG found no evidence of FY12 Shady Grove Innovation Center grant payments to MEDCO or Scheer.

March 8, 2012

A CBIF Invoice submitted to Montgomery County requested payment of $138,980.63 for the FY12 Germantown Innovation Center Montgomery County Annual Grant: -2nd and final lease payment invoice. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. The item was paid by Montgomery County check # 1852357 on March 8, 2012, and was posted against the accounting ledgers of the Germantown Innovation Center.

> *OIG Observation:* FY12 Montgomery College rent payments of $148,608.43 were paid by Montgomery County on 9 & 11 Nov 2012, and $242,163.47 by Scheer on 23 May 2012.

May 11, 2012

A CBIF Invoice submitted to Montgomery County requested payment of $130,000 for the FY12 Shady Grove Innovation Center. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. The item was paid by Montgomery County check # 1867971 on May 11, 2012, and was posted against the accounting ledgers of the Shady Grove Innovation Center.

OIG Observation: A May 23, 2012 DED COO e-mail indicates that the FY13 Shady Grove Innovation Center grant will be $270,000. The OIG found no evidence of FY12 Shady Grove Innovation Center grant payments to MEDCO or Scheer.

July 13, 2012

A CBIF Invoice submitted to Montgomery County requested payment of $840,000 for the FY13 Germantown Incubator Grant. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. The item was paid by Montgomery County check # 1884309 on July 13, 2012, and was posted against the accounting ledgers of the Germantown Innovation Center.

OIG Observation: A May 23, 2012 DED COO e-mail indicates that the FY13 Germantown Innovation Center grant will be $500,000. The OIG also found evidence that the 1st Installment of FY13 Montgomery College Rent for $153,650.65 was paid by Montgomery County check # 282668 on 28 Dec 2012

May 1, 2013

An e-mail from the DED COO instructed Scheer to pay $200,000 to the CBIF for the Germantown Innovation Center Rent Payment. This item was paid by Scheer/MEDCO check # 2098 on May 8, 2013, and posted against the Germantown Innovation Center operating funds maintained by Scheer.

OIG Observation: The FY13 Montgomery College Rent 2nd Installment of $363,755.62 was paid by Montgomery County on 24 May 2013"

June 1, 2013

The Scheer COO mails a check for $150,000 for the FY14 Rent for the Wheaton Innovation Center. The letter indicates the check was prepared "as we discussed on 06/11/13." This item was paid by Scheer/MEDCO check # 2332 on June 12, 2013, and posted against the Wheaton Innovation Center operating funds maintained by Scheer.

OIG Observation: The FY14 Westfield (Wheaton Landlord) lease payment of $268,675.44 was paid by Montgomery County on 1 July 2013

July 5, 2013

A CBIF Invoice submitted to Montgomery County requested payment of $840,000 for the FY14 Germantown Innovation Center Grant. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. The item was paid by Montgomery County check # 1969824 on July 5, 2013, and was posted against the accounting ledgers of the Germantown Innovation Center.

OIG Observation: The OIG found no evidence of outstanding Germantown Innovation Center rent payments for this period

November 1, 2013

An e-mail from the DED COO instructed Scheer to pay $149,130.63 to the CBIF for the FY14 Germantown Innovation Center Rent first payment. This item was paid by Scheer/MEDCO check # 2235 on November 8, 2013, and posted against the Germantown Innovation Center operating funds maintained by Scheer. The e-mail bore the instructions to mail the check to the DED COO.

> *OIG Observation:* The FY13 Montgomery College Rent 2nd Installment of $149,130.63 was paid directly by Montgomery County check # 2006766 on 12 December 2013.

March 1, 2014

An e-mail from the DED COO instructed Scheer to pay $120,000 to the CBIF for the FY14 Germantown Innovation Center's FY14 second and last rent payment. This item was paid by Scheer/MEDCO check # 2318 on March 21, 2014, and posted against the Germantown Innovation Center operating funds maintained by Scheer. The e-mail bore the instructions that the DED COO would pick up the check.

> *OIG Observation:* The FY14 Montgomery College Rent 1st Installment of $366,630.63 was paid by Montgomery County check # 2045959 on 20 May 2014.

June 1, 2014

An e-mail from the DED COO instructed Scheer to pay $42,336 to the CBIF for the payment of pre-paid company rents per the partnership agreement due to Chungcheongbuk-do in order to close the partnership. This item was paid by Scheer/MEDCO check # 2371 on May 27, 2014, and posted against the Germantown Innovation Center operating funds maintained by Scheer. The e-mail bore the instructions to mail the check to the DED COO.

June 26, 2014

An $81,500 invoice was submitted to Montgomery County by CBIF for William Hannah Innovation Center Licensee Financial Support to reimburse Incidental Expenses and provide Miscellaneous Impact Assistance to licensees required to relocate due to the National Cybersecurity Center of Excellence (NCCoE) conversion. The payment approval was coded to use a commodity code for Economic Development Partnership.

> *OIG Observation:* Scheer-prepared monthly financial reports from July through December 2014 recording that Scheer made payments described as Incidental & Miscellaneous Impact soft landing payments totaling $624,111 to all WHIC licensees.

1 Jul 2014

An e-mail from the DED COO instructed Scheer to pay $246,521 to the CBIF to pay for the return of Chungbuk's Investment to Montgomery County Final Payment #3. This item was paid by Scheer/MEDCO check # 2421 on July 22, 2014, and posted against the Germantown Innovation Center operating funds maintained by Scheer. The e-mail bore the instructions to mail the check to the DED COO.

> *OIG Observation:* We located evidence of a $505,415.98 payment to Chungcheongbuk-do by a party other than Montgomery County, Scheer, or MEDCO. This amount plus funds wired by Montgomery County equals the $2,508,895.82 amount originally disbursed by Chungcheongbuk-do per the MOU.

July 8, 2014

A CBIF invoice submitted to Montgomery County requested payment of $970,000 - $840,000 for the FY15 Germantown Innovation Center Grant and $130,000 for the FY15 Mentorship Program for Life Sciences. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO, and the authorization bore the instructions to hold check for pick up. The item was paid by Montgomery County check # 2068812 on July 8, 2014, and was posted against the accounting ledgers of the Germantown Innovation Center.

> *OIG Observation:* The FY15 Montgomery College rent payment was paid in two installments. The first for 369,455.62 was paid by Montgomery County via electronic funds transfer # 412010 on June 14, 2015. The second installment for $146,955.63 was paid by Scheer check # 2707 on May 1,2015.

August 5, 2015

A CBIF invoice submitted to Montgomery County requested payment of $521,484 - 514,461 for the Germantown Innovation Center 2015-2016 Annual Rent from Montgomery County Grant Funds and $7,023 for the Annual MCRA Fee. The payment approval was marked "Lease!" and the commodity code for Rent/Leases applied. The invoice was approved for payment by the DED COO. The item was paid by Montgomery County electronic funds transfer # 417379 on August 6, 2015, and was posted against the accounting ledgers of the Germantown Innovation Center.

> *OIG Observation:* The FY16 Montgomery College rent payment was paid in two installments. The first for $144,730.62 was paid by Montgomery County check # 2213932 on April 25, 2016. The second installment of $369,730.63 was paid by Scheer check # 3138 on June 1, 2016.

October 12, 2015

A CBIF invoice submitted to Montgomery County requested payment of $360,000 for the Germantown Innovation Center 2015-2016 Final Payment. The payment approval was marked "Rent!" and the commodity code for Rent/Leases applied. The invoice was approved for payment by the DED COO. The item was paid by Montgomery County electronic funds transfer # 422158 on October 12, 2015, and was posted against the accounting ledgers of the Germantown Innovation Center.

> *OIG Observation:* The FY16 Montgomery College rent payment was paid in two installments. The first for $144,730.62 was paid by Montgomery County check # 2213932 on April 25, 2016. The second installment of $369,730.63 was paid by Scheer check # 3138 on June 1, 2016.

November 20, 2015

A CBIF invoice submitted to Montgomery County requested payment of $315,000 - $235,000 for the Shady Grove Innovation Center (NCCoE) Mortgage FY16 2nd and Final Payment Montgomery County Grant Funds, and $80,000 for the R&M Reserve. The payment approval was marked "Rent/Lease!" and the commodity code for Rent/Leases applied. The invoice was approved for payment by the DED COO. The item was paid by Montgomery County electronic funds transfer # 425211 on November 20, 2015, and was posted against the accounting ledgers of the Shady Grove Innovation Center.

OIG Observation: No documentation related to this transaction was located within available records.

February 29, 2016

A CBIF invoice submitted to Montgomery County requested payment of $382,500 - $342,000 for the NCCoE 2016 First Half payment Montgomery County Grant Funds, and $40,000 for the R&M Reserve. The payment approval was coded to use a commodity code for Rent/Leases. The invoice was approved for payment by the DED COO. The item was paid by Montgomery County electronic funds transfer # 433532 on February 29, 2016, and was posted against the accounting ledgers of the Shady Grove Innovation Center.

OIG Observation: No documentation related to this transaction was located within available records.

Persons of Interest Related to the Chungbuk Incubator Fund LLC

Between 2007 and 2016, the Chungcheongbuk-do Provincial Governor named two individuals to serve in back-to-back terms as the Province's official liaison with the County and the state. The second term coincided with the start-up of the shell company. This individual served in the additional role as Manager of the Chungbuk Incubator Fund, LLC, although we found no evidence to suggest that this role was part of the individual's Provincial government duties.

Concurrent with the development of the MOU, the DED COO instructed MEDCO and Scheer to make a series of three disbursements over six months totaling $191,200 from incubator funds to the CB Exchange Liaison and the CB Liaison/CBIF Manager. These payments were not authorized under the terms of the MOU, nor did the OIG find evidence supporting the validity of the purpose for the payments, nor were the purpose for the payments questioned by either MEDCO or Scheer.

These two individuals received DED COO-authorized payments totaling $191,200[45] from MEDCO:

[45] We reviewed evidence of on other payments totaling $69,700 paid directly by Montgomery County to the CBIF Exchange Liaison. The payments, apparent requests for reimbursement, were supported by various business expense invoices and asserted services, and not associated with the questionable payments the DED COO requested through MEDCO.

Subsequent testing by Baker Tilly isolated questionable payments to an individual with possible relations to and for the benefit of the DED COO. Their work determined that an individual hired by DED for administrative help was subsequently engaged as a consultant, earning a total of $194,215 in DED COO-approved payments made by MEDCO and Scheer. This individual could not be directly linked to the DED COO.

Chungcheongbuk-do Exchange Liaison & Manager of the Chungbuk Incubator Fund LLC				$191,200
Amount	**Date o Evidence**	**Payor**	**Charge to**	**Source of Instructions**
	Description of Invoiced Charges			
	OIG Observation			
81,200.00	**3 Nov 2009**	**MEDCO**	**GIC**	**Memorandum from DED COO via DED Director**
	Invoice Description:			Payment to CB Exchange Liaison for High Tech Medical Complex Feasibility & Partnership.
20,000.00	**19 Mar 2010**	**MEDCO**	**DED**	**Memorandum from DED COO via DED Director**
	Invoice Description:			Payment to the CB Liaison/CBIF Manager for partial funding for foreign exchange staff
90,000.00	**10 May 2010**	**MEDCO**	**RIC**	**Memorandum from DED COO via DED Director**
	Invoice Description:			Payment to the CB Liaison/CBIF Manager for advance funding for Chungbuk's exchange staff in DED (to be restored in June 2010 upon receipt of Chungbuk's fund)
	OIG Observation: for all payments			All three memoranda reference authority under Article 1, Section 1.1 the the Grant Agreement between the County and MEDCO dated June 18, 1998 that "Monies deposited into the Special Account may only be used for economic development projects in Montgomery County, Maryland, as approved by the Director of the Montgomery County Department of Economic Development (the "Director"). The County, Through the Director, shall also have the right to withdraw funds from the Special Account for such purposes."

Dissolution of the Memorandum of Understanding Between Montgomery County and Chungcheongbuk-do Province

Montgomery County, the Maryland Department of Business and Economic Development, and the National Institute for Standards and Technology signed a memorandum of understanding in February 2012 that set forth their mutual intent to create a National Cybersecurity Center of Excellence (NCCoE), subsequently identifying the William Hanna (Shady Grove) Innovation Center (WHIC) as a good location.

Correspondence was exchanged between DED and Chungcheongbuk-do Provincial officials in October and November 2012 acknowledging the County's appreciation for continued support for the incubator space sharing partnership project despite a slowdown of incubator rental due to economic conditions and growing skepticism in the Chungcheongbuk-do Provincial Parliament about the project.

In a letter to the DED COO one year later, another Chungcheongbuk-do Provincial official advised he had heard that Shady Grove's ownership was changing, and expressed concern for the fate of the space set aside for Chungcheongbuk-do companies. The official questioned why this change had not been discussed with Chungcheongbuk-do, and noted that if the 2010 Investment and Incubation Center Agreement was abolished, the County would need to return the ₩3 billion Korean Wan.

In June 2014, the DED COO provided four letters explaining that Montgomery County had entered into agreements to develop the NCCoE and the reasons why it now sought to end the agreement with Chungcheongbuk-do. In that message, the DED COO provided a chart that reconciled the Province's three wire transfers - March 23, August 31, and September 15, 2010 - totaling $2,508,895.82 / ₩3,000,000,000.

The following month, the Chungcheongbuk-do Provincial official advised the DED COO that he had signed the "Mutual Waiver Agreement Montgomery County - Chungcheongbuk-do" July 4 and had return the copies by post. Later that month, the DED COO received a Confirmation of $2,003,479.84 wire transfer from Montgomery County to the Governor of Chungcheongbuk-do, and in August was advised "Your second investment of $515,415.98 was well received yesterday." While the County had previously sent interest and loan fees totaling $6,718.01 to Chungcheongbuk-do, we found no evidence that the $515 thousand had been paid by the County or MEDCO. We located evidence that the DED COO had instructed Scheer on July 1, 2014 to disburse $246,521 via international wire transfer from the Germantown incubator to Chungcheongbuk-do for "Chungbuk's Investment Final Payment #3". When advised by the Scheer COO that Scheer could not handle an international wire, the DED COO instructed Scheer to make the payment to CBIF.

Use of the MEDCO Special Reserve Account and Scheer-maintained Incubator Program Funds to Obfuscate Department of Economic Development & Chungbuk Incubator Fund Operations

Build-up of excess reserves at Maryland Economic Development Corporation

When otherwise legitimate expenditures are funded from revenue sources intended for other uses, the expenditures themselves lose their legitimacy. In this case, the revenues collected from the licensees and grants provided to subsidize the incubator operations were used for purposes not related to the incubators and licensee development.

In June 1998, then DED Director 1 recommended that then County Executive Doug Duncan sign a Management Agreement engaging MEDCO to manage the Incubator Program housed in a facility that would result from MEDCO's issuance of Lease Revenue Bonds for the Maryland Technology Development Center.[46]

The 1998 bond indenture agreement and 1998 Management Agreement were coordinated to establish a Special Account at MEDCO to be funded with Operating Surpluses generated by the

[46] Trust Indenture for the $4,490,000 Maryland Economic Development Corporation Taxable Lease Revenue Bonds (Maryland Technology Development Center Project), Series 1998, Dated as of June 1, 1998, between Maryland Economic Development Corporation, As Issuer, and Crestar Bank, As Trustee.

operation of Taxable Lease Revenue Bonds, such amount to be determined annually. An Operating Surplus was defined to be the current balance and estimated deposits into the bond's Working Capital and Operating Expense Fund reduced for projected operating, administrative, debt service, and repair and replacement expenses.[47] Upon receipt of notice and certification, the bond trustee was to pay any Operating Surplus to the bond Issuer who was to deposit the Operating Surplus into a separate account to be used pursuant to the terms of the County Grant Agreement.

The 1998 Grant Agreement[48] provided that MEDCO shall deposit the Operating Surplus into a separate interest-bearing account (the "Special Account"). Monies deposited into the Special Account were only to be used for economic development projects in Montgomery County, Maryland, as approved by the DED Director 1. The County, through its DED Director, was also to have the right to withdraw funds from the Special Account for such purposes.

The existence of the Special Account allowed the DED to accumulate and expend funds, the existence of which would not be readily apparent to management, the Council, or County residents (a relationship hereafter referred to as "Off-Book"). These Off-Book accounts were carried forward into the management agreements for additional Incubator Program facilities and their subsequent contract renewals.[49]

In subsequent renewals of the agreement, the "Special Reserve Account" funding was supplemented with any royalties and annual operating surpluses, and provided the DED with complete control over unused public funds available for the procurement of unspecified economic development projects approved at the sole discretion of the DED Director. This arrangement circumvented management controls established by the County government, avoided transparency and political oversight, and created a standing reserve fund for the DED Director's use.

The 2006 Agreement also specified that the DED Director could make decisions or authorize actions without additional consent or approval from the County and could designate such authority to other individuals. The agreement as created by then DED Director 1 with the support of MEDCO and Scheer, as implemented by later DED Directors, either through

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[47] The Agreement stated that on a date not earlier than April 1 nor later than June 1 of each Fiscal Year, beginning in Fiscal Year 1999 (each such date being herein referred to as the "Operating Surplus Determination Date"), the Issuer shall determine whether or not an Operating Surplus (hereinafter defined) exists as of the Operating Surplus Determination Date. The Agreement also stated that as used herein, the term "Operating Surplus" means, and shall be calculated by the Issuer on each Operating Surplus Determination Date in accordance with the following formula: the total amount of deposits that the Issuer estimates will be made into the Working Capital and Operating Expense Fund during the Fiscal Year immediately succeeding such Operating Surplus Determination Date PLUS the amount on deposit in the Working Capital and Operating Expense Fund on such Operating Surplus Determination Date, MINUS the total amount of expenditures that the Issuer estimates will be made from the Working Capital and Operating Expense Fund during the Fiscal Year immediately succeeding such Operating Surplus Determination Date to pay (i) regular operating expenses of the Property, (ii) Administrative Expenditures, (iii) Debt Service Requirements of the Bonds, and (iv) funds required to be paid into the Repair and Replacement Fund, MINUS $25,000, EQUALS the Operating Surplus.

[48] §1.1, Grant Agreement dated June 1, 1998 between The Maryland Economic Development Corporation and Montgomery County, Maryland.

[49] The Special Reserve Accounts (alternately, Special Account) remained as a feature in the 2006 revision of the DED Management Agreement (2006 Agreement) with MEDCO and subsequent 2007 and 2016 grant agreements.

intentional design or unintentional consequence, ultimately ensured that all financial transactions and information related to the Incubator Program, although available to other entities within the County, would travel through the DED COO.

The Former DED Director, and through purported delegation, the DED COO, was thus in a position to act without oversight, with the full authority of DED management, and outside the purview of internal controls embedded within the County's contracting and procurement processes.

Amassing Incubator Program Fiscal Year End operating surpluses

During this period, the incubators recognized high occupancy rates and licensee fees, and among all incubators there were 20 instances in which an incubator's revenues from annual license fees exceeded its operating expenditures for the Incubator Program. The DED COO would have reviewed Scheer-prepared proforma budgets and Fiscal Year End reports, and would have been in a position to track cumulative reserves at MEDCO. Scheer-prepared Fiscal Year End reports indicate that cumulative reserves from all incubator operations from 2007 through 2010, before the DED COO began diverting funding to CBIF, were $1.856 million.

Business Innovation Network: Reported Annual Operating Surpluses/Loses - FYE 2007-2016

	Germantown	Rockville	Shady Grove	Silver Spring	Wheaton	Impact on Reserves from Annual Operations	Cumulative Reserves: All Incubators
FY16	*(37,526)*	*(330,998)*		**(106,371)**	**141,788**	(333,107)	(1,127,248)
FY15	**(937,310)**	*(298,032)*		**(22,281)**	**21,431**	(1,236,192)	(794,141)
FY14	**(473,175)**	**(512,064)**	*468,241*	**43,453**	**17,536**	(456,909)	442,051
FY13	**(450,880)**	*(147,757)*	**208,701**	**34,927**	**(258,322)**	(613,331)	898,060
FY12	**(292,544)**	*(80,782)*	**110,467**	**9,529**	**(190,528)**	(443,858)	1,511,391
FY11	*251,107*	*(484,876)*	*530,086*	**10,913**	**(207,891)**	99,339	1,955,249
FY10	*20,381*	*(368,206)*	*390,309*	**39,127**	**(211,409)**	(129,798)	1,855,910
FY09	**(163,321)**	*(187,063)*	*602,508*	**8,088**	**(235,798)**	24,414	1,985,708
FY08		*1,105,067*	*563,165*	**(42,770)**	**32,445**	1,657,907	1,961,294
FY07			*327,015*	**(34,119)**	**10,491**	303,387	303,387

Key:

Emboldened #: No County funding in this year

Italicized #: County funding received this year

Source: Scheer Partners, Inc. Monthly Operating Reports for FYE 2007-20016

The DED COO also worked with Scheer and the Office of Management and Budget (OMB) to develop annual operating funding requests. Although funding was budgeted for each incubator in every year, funding was not provided by DED for every incubator in every year. We found no evidence that any current year incubator funding had been offset by a prior periods' operating surplus or loss. In this role, the DED COO was in a position to assure continued funding into the Incubator Program.

MEDCO and Scheer disbursed funds from the accounts they held upon the direction of the DED COO. When they questioned the DED COO's authority to direct distribution of funds, MEDCO and Scheer were provided a document that they asserted in interviews with us that they believed to have been received from the Former DED Director that provided the authority for DED COO's directions.

Conference and Visitors Bureau rent redirected to Incubator Program

During a December 14, 2017 interview, a Complainant asserted that the DED COO had arranged for $120,000 in rental payments for office space sub-leased by the Conference and Visitors Bureau from the DED to be redirected from the County to the Germantown Innovation Center.

Monthly Financial Reports provided by Scheer indicate that between May 2013 and February 2016, the Conference and Visitors Bureau of Montgomery County Maryland (CVB) made rent payments totaling $125,276.32 to the Germantown Innovation Center in care of Scheer.

During (as well as before and after) this same time period, CVB co-located its office within the DED at 111 Rockville Pike, Suite 800, in Rockville, Maryland (not in the GIC).

A CVB Rent Schedule made available to the OIG details the monthly rental rate for CVB for fiscal years 2007 through 2015.

For the months of May and June 2014, CVB paid rent to GIC that was equivalent to the scheduled rate for FY11. For all other periods, the CVB paid a monthly rate of $3,574.75 - a rate that was $1,493 per month more than the highest monthly scheduled rate indicated for the 8-year rent period. For the May 2013 - February 2016 period, CVB paid $54,931.64 more rent than set forth on the CVB Rent Schedule.

During this period, CVB made double monthly rent payments for two periods - May & June 2014.

We found evidence regarding the redirected CVB rent fund disbursements within the following e-mail correspondence extracted from the DED COO's computer.

FY 2013 - FY 2016

An average of 86% of the CVB's revenue came from public sources - County Occupancy Taxes, Municipal Occupancy Taxes, and a Maryland Tourism Grant. 3% of average revenues came from membership fees and miscellaneous income and sales, while 11% of revenues, on average, came from Marketing and Promotions programs (service commissions, trade shows, and advertising revenues).

April 15, 2013

In an e-mail to the CVB CEO, the DED COO advises that "Beginning April 2013 rent payment, please remit the payment Scheer Inc. Scheer is the management company for our incubators... Check should be made payable to: Scheer Partners, Inc., C/O Montgomery County DED, with a note: GL Account #20105 Due to/from Montgomery County."

April 22, 2014

Documents submitted to the PHED for its FY15 budget discussion reflect a FY13 rent expense of $21,207, which increased by $21,690 for an FY15 budget of $42,897 - equal to the rate set in the April 15, 2013 rent e-mail, above. There were no discussion points provided for the rent increase.

April 17, 2015

In documents submitted to the PHED for its FY16 budget discussion, the President of the CVB reported FY15 rent paid equal to the inflated amount paid to GIC, and submitted a 9.5% increase for FY16.

May 31, 2017

Scheer posted an adjusting journal entry to GIC ledgers that reversed $125,277 in CVB rental payments with the transaction description "Reclass CVB Rents to Unearned".

June 27-30, 2017

In an e-mail string with the CVB CEO, a former member of DED staff queries "Today I learned that CVB has been paying $125,000 for many years into the Germantown incubator budget. This was news to me! What's the basis and history of these payments? Is there a contract somewhere to support this?" The CVB CEO responds "I am not familiar with the Germantown Incubator or any contributions to that budget. Our organization shared office space at 111 Rockville Pike with the Department of Economic Development for many years. The DED COO provided us with a space allocation and corresponding rent schedule and instructed our monthly rent payments via invoice from DED that referenced an incubator but I don't know the source."

Legitimate department expenditures drawn against incubator operating surpluses

During an April 16, 2015 interview, a Complainant asserted that Sales*f*orce was paid for with incubator money but used by the whole DED. In a March 2, 2018 follow-up e-mail communication, the Complainant confirmed that Sales*f*orce was purchased and customized for use as DED's "Customer Relationship Management" (CRM) software, and that a.) Sales*f*orce was not used by incubator licensees, b.) DED incubator staff used Sales*f*orce to document Licensee contact information, entrance and graduation from the incubator, and employee counts, and c.) other, non-incubator DED staff used Sales*f*orce to capture general economic development activity relating to prospective company contact information, employee counts, and DED's history with the company (such as meetings, marketing "touches", and attendance at industry events).

During the period 2010 - 2017, Scheer monthly statements for the Germantown and Shady Grove innovation centers reflect total payments of:

$144,873 to Sales*f*orce for the CRM system used by DED

39,000	to EMSI for business contact databases
22,500	to CoFounders Lab for networking service memberships
2,080	to CRMfusion for Sales*f*orce add-on applications

Although § 2.1.c of the 2006 MEDCO management agreement authorizes the establishment and funding of a Special Reserve Account that could be used to pay for non-specific expenses related to the economic development program at the discretion of the DED Director, these disbursements were made by Scheer from funding allocated to the Incubator Programs.

We found evidence regarding the procurement and payment for these services within the following e-mail correspondence extracted from the DED COO's computer.

Sales*f*orce *client relationship management system*

Sales*f*orce© [50] represents itself as the world's #1 customer relationship management platform, enabling agencies to build stronger connections between citizens, employees, governments, and services with information that makes government more responsive, effective, and above all, efficient.

Between September 2011 and August 2015, Sales*f*orce invoices totaling $144,874.92 were paid in ten payments from Incubator Program funds for the DED databases about employer contact and demographic information. An eleventh payment of $9,675 was paid from DED departmental funds. It is not questioned whether DED benefited from the employer and resident demographic data available for use through Sales*f*orce applications. Rather, we note that payments that had in the past been paid out of DED departmental funds were later transferred to the Incubator Program for payment against accumulated reserves. The question whether Sales*f*orce was a DED departmental or Incubator Program expenditure was raised by BHI during its August 2016 due diligence review of the incubator budget in advance of it entering into a management contract for the Incubator Program. BHI identified the expenditure as one that should not be borne by the incubators and potentially impact BHI's management fee.

There is evidence that the DED had paid for Sales*f*orce with departmental funds in 2010. In 2014 the DED COO pursued requests to have Sales*f*orce modify its invoice description to reflect that the charges were to be in care of the Germantown Innovation Center, even though payments between 2011 and 2015 were routinely rotated among the Germantown and Shady Grove Innovation Centers and DED Departmental funds.

We found evidence regarding the Sales*f*orce disbursements within the following e-mail correspondence extracted from the DED COO's computer.

Date Unknown

$11,667 Sales*f*orce invoice not located among DED COO e-mail documents.

[50] Copyright 2018 Sales*f*orce.com, Inc.

OIG Observation: A later statement prepared by Scheer reports payment of $11,667.25 to Salesforce via check number 4621 drawn on the Shady Grove Innovation Center and dated 4March 2009.

July 22, 2011

The DED COO receives a Salesforce invoice via e-mail for an 18 seat annual Sales Cloud - Enterprise Edition (Government) renewal at $18,900. Bill notes County of Montgomery / Shady Grove Innovation Center.

OIG Observation: A later statement prepared by Scheer reports payment of $18,900 to Salesforce via check number 5709 drawn on the Shady Grove incubator and cleared 30 September 2011.

December 13, 2011

The DED COO instructs a member of DED Staff to use the p-card to pay an $8,218.36 Salesforce balance due. The reference invoice number was not located in DED COO's e-mail data.

OIG Observation: A later statement prepared by Scheer reports payment of $8,218.36 to Salesforce via check number 1694 drawn on the Germantown incubator and cleared 31 December 2011.

Date Unknown

$18,900 Salesforce invoice not located among DED COO e-mail documents

OIG Observation: A later statement prepared by Scheer reports payment of $18,900 to Salesforce via check number 1884 drawn on the Germantown incubator and cleared 31 July 2012.

August 2, 2012

An e-mail contains a Salesforce invoice for the annual renewal of 18 seat licenses of Premier Success Plan (Support) - Sales Cloud for $3,037.50. Bill notes County of Montgomery / Shady Grove Innovation Center.

Date Unknown

$8,218 Salesforce invoice not located among DED COO e-mail documents.

OIG Observation: Scheer e-mails copy of the check used in payment of $8,218.36 to Salesforce via check number 1937 drawn on the Germantown Innovation Center and dated 5 October 2012.

May 8, 2013

A Scheer COO e-mail includes a DED COO requested invoice from Scheer. Detailed among the 5 items is a request for $8,218.36 for the October 2012 cost of Salesforce Tenant Data Tracking.

OIG Observation: A later statement prepared by Scheer reports payment of $8,218.36 to Salesforce via check number 2225 drawn on the Germantown Innovation Center and cleared 30 November 2013.

August 21, 2013

The DED COO forwards a Sales*f*orce invoice instructing the Scheer COO to pay the amount from SGIC. The invoice is for the FY14 annual renewal of Premier Success Plan (Support) - Sales Cloud at $3,037.50 for 18 seats, and Sales Cloud - Enterprise Edition (Government) at $18,900 for 18 seats - totaling $21,937.50.

> *OIG Observation:* Later, the Scheer COO returns via e-mail a requested copy of the check number 2174 used for the payment of $21,937.50 to Sales*f*orce drawn on the Germantown Innovation Center and dated 23 August 2013.

May 20, 2014

The DED COO requests via e-mail to the Scheer COO that Scheer create an invoice to cover $27,000 for Sales*f*orce Database (to be paid from the Germantown incubator in July 2014).

July 7, 2014

A member of DED Staff forwards a finalized invoice from Data.com [Sales*f*orce] to the DED COO. The attached invoice provides details for $4,050 for Data.com Corporate Clean[51] billed to County of Montgomery (MD) c/o Germantown Innovation Center at DED office address, and $9,675 for Data.com Corporate Prospector[52] billed to County of Montgomery (MD) c/o Germantown Innovation Center at DED office address.

> *OIG Observation:* 2014 Montgomery County Oracle Enterprise Resource Planning Business Intelligence and Reporting system reports reflect that $9,675 only was paid via Electronic Funds Transfer on 10 November 2014.

July 14, 2014

Sales*f*orce submitted an annual renewal invoice to the DED COO for 1 year of Premier Success Plan (Support) - Sales Cloud at $3,037.50 for 18 seats, and Sales Cloud - Enterprise Edition (Government) at $18,900 for 18 seats - totaling $21,937.50. The invoice stated "Bill To: County of Montgomery / Shady Grove Innovation Center Attn: [the DED COO]".

July 25, 2014

Sales*f*orce confirms via e-mail to the DED COO the order for one seat license for 1 year of Premier Success Plan (Support) - Sales Cloud and Sales Cloud - Enterprise Edition (Government)

July 30, 2014

In an e-mail to a Sales*f*orce account representative, DED COO asks that the invoice be modified to indicate "Department Economic Development C/O Germantown Innovation Center".

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[51] Sales*f*orce proposes the use of Corporate Clean to keep Sales*f*orce data current and complete with data from Dun & Bradstreet and crowd-sourced data. Corporate Premium Clean includes more Dun & Bradstreet fields for adding to or manually cleaning account, contact, or lead records.

[52] Sales*f*orce proposes the use of Corporate Prospector to search valuable company information from Dun & Bradstreet and millions of crowd-sourced contacts to plan sales territories, segment campaigns, find new accounts to engage, and expand the sales network. Corporate Prospector Premium includes access to the Company Hierarchy page and more Dun & Bradstreet fields.

July 30, 2014

The DED COO forwarded two Sales*f*orce invoices to the Scheer COO asking that payments be processed against the Germantown Innovation Center. One invoice is the July 14 invoice for $21,937.50 which now contains a comment line "Department Economic Development C/O Germantown Innovation Center". The second invoice, which indicates the same bill to and comment as the preceding, is for $1,243.13 to cover one more seat license for 11.7 months use of the Premier Success Plan (Support) - Sales Cloud and Sales Cloud - Enterprise Edition (Government).

> *OIG Observation:* A later statement prepared by Scheer reports payment of $23,180.63 to Sales*f*orce via check number 2439 drawn on the Germantown Innovation Center and cleared 31 August 2014.

August 1, 2014

The DED COO forwards an approval for DED Staff to proceed with the purchase of two databases containing business contact and e-mail addresses for over 27 thousand local businesses for use by the LSBRP. The DED COO highlights such in a September 23, 2014 proposed update on "Examine DED's utilization of the Customer Relationship Management tool Sales*f*orce to identify and track local companies."

August 25, 2014

The DED COO forwards a $1,147.50 Sales*f*orce invoice to the Scheer COO for the cost of one additional Sales Cloud use and support license.

> *OIG Observation:* A later statement prepared by Scheer reports payment of $1,147.50 to Sales*f*orce via check number 2471 drawn on the Germantown Innovation Center and cleared 30 September 2014.

April 30, 2015

The DED COO forwards a Sales*f*orce renewal notice to a DED Staff member inquiring if Sales*f*orce needs to be renewed for one more year. On July 14, the DED COO receives an invoice for $24,486.96 for 20 annual seat and support licenses for Sales Cloud.

August 7, 2015

The DED COO sends a request to the Scheer COO for Scheer to pay $24,487 for the Sales*f*orce contract for FY16.

> *OIG Observation:* A later statement prepared by Scheer reports payment of $24,486.96 to Sales*f*orce via check number 2847 drawn on the Germantown Innovation Center and cleared 31 August 2015.

July 25,2016

The DED COO receives a $25,500 invoice from Sales*f*orce for the FY17 annual renewal of 20 annual seat and support licenses for Sales Cloud.

November 10, 2016

The DED COO receives confirmation from a MCEDC Staff member that the 20 Sales Cloud licenses have been transferred to the new MC Economic Development Corporation.

Economic Modeling Specialists International (EMSI)

EMSI represents itself as a labor market analytics firm providing actionable data and consulting to help government agencies to understand and communicate economic and workforce strengths, respond to business inquiries, and benchmark the government's region against that of its peers.

Between September 2011 and August 2015, EMSI invoices totaling $39,000 were paid in three payments from Incubator Program funds for the DED databases about employer contact and demographic information. It is not questioned whether DED benefited from this market analytics database that interfaced with Salesforce applications. Rather, we note that payments had in the past been paid out of DED departmental funds, but later payments were transferred to the Incubator Program for payment against accumulated reserves.

We found evidence regarding the EMSI disbursements within the following e-mail correspondence extracted from the DED COO's computer.

August 19, 2011

The DED COO asks the Scheer COO to process a $15,000 invoice for the FY12 EMSI database license. He asks that the payment be made from the IT line item of SGIC, and that together with the earlier Sales*f*orce invoice, "will complete the IT related expenditure that SGIC will process for the joint use with the DED main office."

> *OIG Observation:* A later statement prepared by Scheer reports payment of $15,000 to EMSI via check number 2699 drawn on the Shady Grove Innovation Center and cleared 30 September 2011.

May 8, 2013

A Scheer COO e-mail includes a DED COO requested invoice from Scheer. Detailed among the 5 items is a request for $13,000 for the August 2012 cost of the EMSI database.

> *OIG Observation:* 2012 Montgomery County A/P records indicate payment of $13,000 to Economic Modeling LLC via check number 261912 drawn against Economic Development Finance and Administration on 23 October 2012.

May 20, 2014

In an e-mail to the Scheer COO, the DED COO requests an invoice to cover $12,000 for EMSI

> *OIG Observation:* A later statement prepared by Scheer reports payment of $12,000 to EMSI via check number 2523 drawn on the Germantown incubator and cleared 30 November 2014.

August 7, 2015

The DED COO sends a request to the Scheer COO for Scheer to pay $12,000 for the EMSI Database for FY16.

> *OIG Observation:* A later statement prepared by Scheer reports payment of $12,000 to EMSI via check number 2845 drawn on the Germantown Innovation Center and cleared 31 August 2015.

CoFounders Lab

CoFounders Lab represents itself as helping entrepreneurial-minded people access the resources they need to thrive through its ProMembership, which accelerates new business formation and increases the success rate of new businesses by facilitating team building within a larger pool of qualified motivated candidates.

We found evidence regarding the $22,500 CoFounders Lab disbursement within the following e-mail correspondence extracted from the DED COO's computer.

May 20, 2014

The DED COO requests via e-mail to the Scheer COO that Scheer create an invoice to cover $37,500 for CoFounders Lab membership from the GIC (to be paid from the Germantown Incubator in July 2014). Details of the invoice indicate charges are for 500 membership seats at $70 per seat = $35,000, and 1 NRE (described as "Marketing services and tracking related to promotion, distribution, and administration of pro-memberships.") item at $2,500

> *OIG Observation:* A later statement prepared by Scheer reports payment of $22,500 to CoFounders Lab via check number 2372 drawn on the Germantown incubator and cleared 6/30/14.

CRMfusion

On Sales*f*orce's co-sponsored vendor link, CRMfusion is represented as a Salesforce partner providing administrators with a toolkit to clean, de-duplicate, standardize, and avoid future duplications in their data.

In July 2010, a CRMfusion invoice for $2,080 was paid from Incubator Program funds on deposit with Scheer. Another $1,580 was paid against the DED Departmental account directly by Montgomery County.

We found evidence regarding the CRMfusion disbursement within the following e-mail correspondence extracted from the DED COO's computer.

July 26, 2010

The Scheer COO forwards a signed CRMfusion contract and an invoice for $2,080 to the DED COO. Scheer signs the contract for the benefit of the Montgomery County Department of Economic Development.

> *OIG Observation:* Scheer subsequently reports payment of $2,080 to CRMfusion via check number 1370 drawn on the Germantown incubator and cleared 8/31/10.

June 30, 2014

A DED Staff member sends a copy of a $1,580 CRMfusion renewal invoice to the DED COO. The invoice details 4 Sales*f*orce add-on applications, granting 18 annual seat licenses for each.

OIG Observation: 2014 Montgomery County A/P records indicate payment of $1,580 to CRMfusion Inc via check number 2069417 drawn against Economic Development Marketing and Business Development on 7/10/14.

July 22, 2015

The DED COO sends a note to a DED Staff member that DED will not renew CRMFusion DemandTools and DupeBlocker per another DED Staff member's recommendation.

Former DED Employee Hired as Consultant

During an April 16, 2015 interview, a Complainant asserted that a Former DED Employee who moved out of the area was paid under contract with the Incubator Program, and now that s/he had returned, s/he received payments tied to incubator activities.

Between September 2010 and December 2013, monthly financial statements provided by Scheer indicate that the Former DED Employee received 36 payments totaling $68,269.81, thirty-five of which were drawn against the Germantown Innovation Center, and the 36th drawn against the Shady Grove Innovation Center.

The Former DED Employee served in a program management role from December 2013 through July 2015, and previously worked at DED from February 2006 through June 2010. Her/his resume indicates that s/he was an independent contractor for Montgomery County between July 2010 and December 2013.

Incubator Program funds appear to have been used for the payment of legitimate DED departmental costs, enabling the DED COO to circumvent the County's procurement regulations and controls. The contract employment focused on projects as assigned, and on agricultural development, although the MEDCO agreement with the County does not provide for funding agricultural development activities. During work as a contract employee, the Former DED Employee worked on the County's Green Incubator Initiative, developed a DED Request for Proposals for the Initiative's Program Manager, and subsequently was awarded the agricultural Green Incubator program management contract, earning an additional $25,748.33 between June 2012 and April 2013.

We found evidence regarding payments to the Former DED Employee within the following e-mail correspondence extracted from the DED COO's computer.

August 9,2010

The DED COO forwards a proposed contract with the Former DED Employee to the Scheer COO for Scheer to execute. Scheer returns the signed copy 2 days later. Highlights from the contract are:

- **Scope of Work**. The Consultant will provide services to complement the development and management of the Montgomery County Business Incubator Network, including any new projects that result from the County's strategic plan or Green Economy Task Force report.
- **Starting and Completion Dates**. This Contract is made effective as of July 1, 2010.
- **Compensation**. The Consultant will be paid for the services set forth in this Contract at the rate of $40 per hour, plus expenses, provided that the total payments to the Consultant

resulting from this contract do not exceed $30,000. Any work performed by the Consultant in excess of $30,000 in total fees and expenses must be approved by Scheer, in writing, prior to the commencement of the work.

- **Term of Contract**. The Contract will end on June 30, 2011, A one-time extension to this contract is allowable under the terms for up to a twelve-month period of time, provided that the extension is approved, in writing, by all parties.

August 11,2010

The DED COO received an e-mail containing the Scheer-only executed copy of Former DED Employee 's contract with a question whether Scheer should forward copy to Former DED Employee.

August 21-25, 2010

The DED COO and the Former DED Employee exchange e-mail about, and the DED COO approves, the Former DED Employee's visit to the Intervale farm incubator in Burlington, Vermont. The Former DED Employee's expenses for the visit are included in her/his invoice number 2 dated September 2, 2010 and presented to Scheer for payment by the Germantown Incubator.

March 1, 2011

The DED COO receives an e-mail containing two contracts Scheer executed for "interns conducting research and compilation of data for bio/healthcare towards the broad industry/incubator focus." Both contracts recycle the Former DED Employee 's contract and pay at the same hourly rate as the Former DED Employee. The DED COO advises the Scheer COO that not all money earmarked for the Former DED Employee will be used, so the remaining balance of that can be used for these payments. The DED COO indicates that a $2,000 up-front payment will be required. The contracts indicate an effective date of February 22, 2011 and termination date of May 6, 2011.

> *OIG Observation:* A later statement prepared by Scheer reports payment of $2,000 to the 1st intern via check number 1534 drawn on the Germantown incubator and cleared 4/30/11.
>
> *OIG Observation:* A later statement prepared by Scheer reports payment of $2,000 to the 2nd intern via check number 1536 drawn on the Germantown incubator and cleared 4/30/11. No other payments are recorded between February and June 2011 at any incubator.

August 8, 2011

An e-mail to the DED COO from the Scheer COO contains the signature page for a one-time, 12-month extension of the contract between Scheer and the Former DED Employee that was executed on 7/13/11.

January 18-March 20,2012

In a string of e-mail conversations, the Former DED Employee, DED COO, two DED employees, an Office of Management and Budget (OMB) employee, the Former DED Director, two employees from the County Executive's Office (CEX), an employee of the Office of the County Attorney (OCA), and an employee from the Department of General Services (DGS) develop, discuss, resolve obstacles, and agree to final approval of an informal SBA RFP for solicitation # 1014502 for Program Management Consulting Services.

OIG Observation: A later statement prepared by Scheer reports payment of up to 15.5 hours ($620) drawn on the Germantown Incubator for an invoice the Former DED Employee submitted on SBA RFP work.

April 3, 2012

The Former DED Employee submits a proposal in response to the Program Management Consulting Services informal solicitation # 1014502.

April 24, 2012

An e-mail to the DED COO from a DED employee contains a draft memorandum from the Former DED Director to the Director of DGS recommending that the contract for solicitation # 1014502 be awarded to the Former DED Employee. The Former DED Director asserts that the "solicitation was posted on the Office of Procurement Website and e-mailed to a random selection of vendors provided by the Office of Procurement. To date, only one proposal was received [... that] met the pre-set criteria outlined in the solicitation"

May 23, 2012

The DED COO receives an e-mail from an employee in the Office of Procurement containing a fully executed copy of contract #1014502 with the Former DED Employee and a $27,000 Purchase Order signed by the Director of DGS. The Purchase Order's term was for one year, or not to exceed $24,000 payment and $3,000 expense reimbursement.

May 2012 - April 2013

Montgomery County Accounts Payable and procurement Purchase Order records indicate payment of $25,748.33 via 12 invoices in payment toward DED contract number 1014502.

OIG Observation: A later statement prepared by Scheer reports 10 payments totaling $10,181.15 (of the 36 payments totaling $68,269.81 previously noted) drawn on the Germantown Incubator for invoices the Former DED Employee submitted.

August 1, 2012 - October 15, 2013

A series of e-mail conversations demonstrate the Former DED Employee 's involvement with multiple agricultural development projects, such as New Entry Sustainable Farming, Countryside Alliance "Land Link" web development and "consulting", Green Business Financing Program (Bethesda Green), the New Farmer Pilot Project, and the Green Investor Incentive.

April 30, 2013

The DED COO's calendar contains an appointment requested by the Former DED Employee to "run through this [Scheer Contract] with me".

Consultant Engagement and Initial Bioscience Initiative Appropriation Payment Through Uncontracted Relationship with Rockville Economic Development, Inc., and Subsequent Uncontracted BioHealth Innovation Program Services

In late 2010, the County Department of Economic Development (DED) arranged for the Rockville Economic Development, Inc. (REDI) to enter into a contract with the Consultant/BHI CEO to complete an assessment and implementation plan for the establishment of a Bioscience Intermediary. The $100,000 contract was to be funded with donations from universities and private sector companies. Although the County was not a named party to the contract, the Former DED Director was listed as the contract administrator in the contract. Based on correspondence between the Consultant/BHI CEO, DED, and REDI it is clear that the Consultant/BHI CEO considered the County his client, and DED did not dispute this contention.

In June 2011, when donations were received more slowly than expected, the DED COO arranged for Scheer to pay the Consultant/BHI CEO $12,500 from GIC. This was later paid back by REDI when funds became available.

In September 2011, a contract extension was signed for the Consultant/BHI CEO (retroactive to July 1, 2011). Johns Hopkins University (JHU) agreed to front $50,000 to pay two months of the Consultant/BHI CEO's salary to fund the extension. The purpose of the contract was to develop an implementation plan and set up the new intermediary that eventually became BioHealth Innovation, Inc (BHI). (See Appendix D - Consultant's Implementation Plan)

By November 2011, BHI had become registered as an entity with SDAT. BHI was organized as two separate entities, Biohealth Innovation, Inc (BHI), a nonprofit that receives donations, and BHI Management, Inc. (BHI Management), a separate for-profit holding company that is permitted to hold equity in the businesses it assists. The Consultant/BHI CEO was initially approved as the interim BHI CEO but remains CEO of the nonprofit BHI to this day.

Initially, BHI secured donor commitments from local universities and the private sector totaling $750,000 per year for 3 years. At the same time, the County committed $500,000 per year for the same 3-year period. On January 30, 2012, a supplemental appropriation for the 3-year commitment was approved by the Council. That appropriation was renewed at the end of the 3-year period, and BHI continued to receive $500,000 per year in County funding to supplement its operating costs. There did not appear to be any contract or MOU attached to the funding, initially funneled through REDI and later paid directly by the County, until the development of a grant agreement between MEDCO and BHI in August 2017.

In March 2015, the County Executive's recommended budget included a separate $250,000 grant to BHI to fund what would become the Relevant Health Accelerator. This endeavor included giving BHI several offices in the Rockville Innovation Center for the purpose of establishing an accelerator to help start-up business. BHI's for-profit arm (BHI Management) was to receive a percentage of the businesses in exchange for their assistance. Additionally, they would receive free space and start-up funding from the County. This was in addition to the annual $500,000 appropriation for BHI.

During spring 2015, the DED COO advanced $100,000 to BHI from the Incubator Program (through Scheer) in expectation that the $250,000 will come through for Relevant Health, would be in the final budget for FY16. The DED COO specifically instructs the Scheer COO to revise the invoice for the advance so that it does not mention the accelerator but only states "Life Sciences Impact Grant."

BHI stated that the first cohort in Relevant Health was too expensive, and they would not be doing another, but they continued to seek a continuation of the funding earmarked for Relevant Health. Relevant Health space is currently used for Incubator activities (under BHI Management). It is unclear whether the second year of funding ever came through. Per their financials, Relevant Health is in debt to BHI Management.

> *OIG Observation:* Relevant Health, LLC was registered with the state in September 2015 with a return address at BHI Management.

Upon dissolution of the DED in summer 2016, BHI took over the management of both the Rockville and Germantown Innovation Centers which were separately funded by the County. In addition to the incubator funding, at this time, BHI's annual $500,000 appropriation began to be paid through MEDCO. Correspondence indicates that this was done to avoid BHI having to enter into a contract with the County.

Per the terms of their agreement with MEDCO regarding the incubators, BHI was given latitude to develop screening, admittance, and evaluation criteria. BHI received 75% of profits (deposits exceeding operating costs), and BHI was allowed to enter into separate contracts with licensees for value added service in exchange for direct fees or equity participation in the incubator licensee companies.

Currently, BHI receives its annual appropriation for BHI operating costs as well as separate funding for GIC and RIC. We found no evidence that either BHI or Relevant Health had any contract with the County or that the Consultant/BHI CEO was chosen as the recipient of County funds through any competitive process.

We found evidence regarding the BioScience Intermediary's engagement and continuing services within the following e-mail correspondence extracted from the DED COO's computer.

October 2009

The individual responsible for Development Oversight, Facilities & Real Estate, JHU appears to organize a meeting that includes the Consultant/BHI CEO, the Former DED Director, and himself. In June 2018, the Consultant/BHI CEO appears to have forwarded the e-mail to the

Current ACAO Representative [53], then Special Projects Manager, with the message, "Original Contact." This e-mail was forwarded to the OIG by the Current ACAO Representative who states that "This was how [the Consultant/BHI CEO] was introduced to DED."

December 2009 - January 2010

The Consultant/BHI CEO forwards to himself an e-mail which appears to be between the individual responsible for JHU Development Oversight, Facilities & Real Estate, and two Councilmembers. It is unclear how the Consultant/BHI CEO obtained the e-mail. In the e-mail, the individual responsible for JHU Development Oversight, Facilities & Real Estate tells the Councilmembers:

> *"As discussed yesterday at the Committee for Montgomery Legislative Breakfast, you had asked that I forward some materials on someone whom I believe is the best qualified person in the U.S. to advise Montgomery County on how TO PLAN AND EXECUTE our jobs and economic development strategy....His name is [the Consultant/BHI CEO]."*

The individual responsible for JHU Development Oversight, Facilities & Real Estate summarizes highlights of the Consultant/BHI CEO's past work and attaches the Consultant/BHI CEO's resume and work samples.

It appears that the Consultant/BHI CEO and one of the Councilmembers met in person shortly after (January 2010) the December 2009 introductory e-mail was sent to the Councilmember by the individual responsible for JHU Development Oversight, Facilities & Real Estate.

September 22, 2010

The then REDI Executive Director shares a cover note purportedly drafted by the DED COO stating that DED wants to explore partnering with REDI to implement recommendations of the County Bioscience Task Force. The e-mail states that no County money will be used, but private partners have committed $100,000 to fund consultant (the Consultant/BHI CEO of Innovation America) development of an "Opportunity Assessment and Implementation Plan." The Consultant/BHI CEO is said to be referred by Johns Hopkins University (JHU), who has purportedly worked with JHU in the past, and is supported by every entity that has committed funds.

> *"Due to the* make-*up of the Committee structure, the Former DED Director needs to be the contract administrator. However, given the nature of how the funding is arranged, the County can neither receive the funds nor place a contract with the Consultant/BHI CEO. We believe that REDI, as a non-profit organization could receive the private donation and hold the contract. We are making this request not just to circumvent the system and make REDI an accounting conduit. Rather, we make this request because REDI is one of the key stakeholders and the beneficiary in the overall Opportunity Assessment and Implementation Plan development."*

[53] During the period covered by this report, the individual whom we refer to as the Current ACAO Representative held multiple positions within the Montgomery County government, and may not have been serving in the role of Assistant Chief Administrative Officer at the time.

November 2010

The DED COO negotiates a contract with the Consultant/BHI CEO to be signed by the Consultant/BHI CEO and REDI. According the Consultant/BHI CEO's 2018 LinkedIn©[54] profile, he has been the President and CEO of Innovation America in the Philadelphia area since 2007.

The Former DED Director shares a Final Contract (unsigned) and a list of stakeholders (donors).

We located a sample Donor Invoice (this being addressed to one of the donors, Qiagen) which was sent under the Former DED Director's signature with the Former DED Director indicated as the contact person.

February - March 2011

Although the Former DED Director asserted that County funds would not be used, DED employees are tracking donations and sending invoices to fund the Consultant/BHI CEO contract.

The Consultant/BHI CEO submits the *Montgomery County Biosciences Cluster Competitive Literature Review*, which the Consultant/BHI CEO states "was conducted to provide validation to the strategies for growth and opportunity before the Montgomery County, Maryland Global Biosciences Cluster." This is a required deliverable in the Consultant/BHI CEO's contract.

March 20, 2011

The Consultant/BHI CEO sends an invoice to the DED COO with a copy to the Former DED Director for $45,000 for period of Dec 1, 2010-March 31, 2011. The communication also included talk of deliverables.

The Consultant/BHI CEO includes a PowerPoint, dated March 15, 2011, summarizing his work on the contract.

April 5, 2011

REDI states that REDI will only be able to pay $40,000 of $45,000 invoice as only $42,000 in contributions have been received.

April-May 2011

The DED COO provides a translation of some of the Consultant/BHI CEO's work product into Korean for distribution in Chungcheongbuk-do.

The Consultant/BHI CEO submits a draft Innovation Intermediary budget and organization chart.

The Consultant/BHI CEO states to the DED COO that the Consultant/BHI CEO received partial payment and that he made an addition error, and the initial invoice should be $47,500, so $7,500 is remaining balance due. The DED COO signs off on $7,500 which the DED COO

[54] Copyright LinkedIn Corporation, Sunnyvale, California.

approves for payment on May 2,2011 when $10,000 is received from Medimmune for its pledged donation.

The Consultant/BHI CEO submits the final work product for the contract to the DED COO on May 24, 2011 and requests final payment of $32,500.

June 2011

On June 7, 2011, the DED COO requests and receives an accounting of contribution checks received by REDI and payments made to the Consultant/BHI CEO to date. The REDI account balance is $9,500, which will not cover the Consultant/BHI CEO's final payment.

The Consultant/BHI CEO pushes the DED COO to get paid. *"I have been very patient but would like to see someone become proactive as ultimately the County is my client."*

The DED COO tells the then REDI Executive Director that County is the Consultant/BHI CEO's client, and if payments do not come in next 1-2 days, he will need REDI to generate an invoice for the deficient amount ($23,000) so DED can advance the remaining funds to the Consultant/BHI CEO.

The DED COO authorized payment to the Consultant/BHI CEO of $7,000 from the REDI account.

The Consultant/BHI CEO sends an e-mail to the DED COO stating JHU will help make calls to get sponsor payments. The Consultant/BHI CEO also references major likely future commitments from County Executive Leggett, HGS, Medimmune, and JHU in attempt to get payment.

On June 30, 2011, the DED COO requests that Scheer pay the Consultant/BHI CEO the remaining $12,500 owed from GIC. The DED COO states that it should be drawn from the "consulting line item of GIC (where the Former DED Employee's payment resides) budget"

August 2011

The Consultant/BHI CEO delivers the "*Implementation Plan for BioHealth Initiatives for Central Maryland Region*", which includes information regarding the mission and goals as well as a 90 day action plan for the establishment of the new biohealth intermediary.

The Former ACAO Representative tells the Former DED Director that he spoke with the individual responsible for JHU Development Oversight, Facilities & Real Estate, who thought there would be no problem with JHU *"fronting $50,000 to pay for Richard Millers work and 2 months for [the Consultant/BHI CEO]."* The Former DED Director then tells the DED COO to start processing the paperwork for this. The Consultant/BHI CEO then states that whoever fronts should *"get credit against their institutions commitment to the first year for ABHI."* The Former ACAO Representative assures the Consultant/BHI CEO that credit will be given, and it is hoped that ABHI will be funded through REDI beginning in October 2011 (OIG emphasis added).

The Current ACAO Representative, then a Special Projects Manager, asks the DED COO and the Former DED Director to advise her/him when they are ready to *"execute the contract with* *[the Consultant/BHI CEO] for a $20,000 payment to REDI, which will then pay the contractor."* (OIG emphasis added) the Current ACAO Representative attaches a revised Consultant/BHI CEO contract. It appears that the Current ACAO Representative, the Former ACAO Representative, and the Consultant/BHI CEO have been working together on an American BioHealth Innovation (ABHI) implementation plan with the Consultant/BHI CEO as interim CEO. The start date of contract is to be retroactive to July 1, 2011. The Current ACAO Representative sends several e-mails instructing DED to pay REDI the $20,000 so that the Consultant/BHI CEO can be paid.

September 2011

On September 14, 2011, the Consultant/BHI CEO e-mails the DED COO that the working group approved the Consultant/BHI CEO as interim CEO. The Consultant/BHI CEO submits invoice for $20,000 (July and August) and asks what procedure needs to be followed to finalize contract. The Consultant/BHI CEO asks whether Montgomery County has "*any 501c3 corporations established and/or bank accounts under a 501c3 where the ABHI checks and donations can be received* (OIG emphasis added)."

The DED COO responds to the Consultant/BHI CEO: "Once [the then REDI Executive Director] returns, I will work with [her/him] to execute the contract and send it to you. In anticipation of contract execution next week and subsequent payment, I will invoice JHU for their $50,000.

We do not have a separate bank account *but do have a means to hold a revenue and expend against it.* However, if you anticipate a substantial amount or recurring contribution checks, then we might have to think about the proper instrument." (OIG emphasis added.)

The ABHI 3-year commitment consist of: JHU at $125,000/ year, the University of Maryland (UMD) at $125,000/year, Medimmune at $250,000/year, Human Genome Sciences (HGS) at $250,000/year, and County Executive Leggett at $500,000/year. The Consultant/BHI CEO requests an initial installment from County Executive Leggett to demonstrate good faith to the other stakeholders. The Current ACAO Representative shares commitment letters from JHU and UMD with REDI. The commitment letters suggest the County Executive had significant role in discussions with UMD and JHU to obtain funding.

On September 23, 2011, the Current ACAO Representative e-mails the Former DED Director and the DED COO with some changes the then REDI Executive Director wanted to make to the Consultant/BHI CEO's contract. S/he states that "if you don't have any questions, please take this as the final contract" and states that the Consultant/BHI CEO has already faxed his signature page, and s/he will leave it to DED to coordinate the rest. The Current ACAO Representative and the Former ACAO Representative are also working on getting donor payments so that the Consultant/BHI CEO can be paid as he is already in the third month of the work that is the subject of the contract.

On September 26, 2011, the Current ACAO Representative tells the then REDI Executive Director that s/he spoke to the DED COO about DED paying the Consultant/BHI CEO $20,000 to cover July and August. S/he attaches a final contract with the Consultant/BHI CEO to the e-mail and addresses following up with UMD and JHU to REDI to secure a $50,000 payment from each to REDI to cover expenses.

The Current ACAO Representative edits a one-page summary of ABHI.

October 2011

A Former ACAO Representative e-mail references BHI rather than ABHI, and transitioning BHI from government led initiative to one led by Intermediary staff. The Consultant/BHI CEO and the Current ACAO Representative will have the lead for interacting with all partners during transition. The Consultant/BHI CEO will be the interim CEO with support from the Current ACAO Representative.

The Current ACAO Representative e-mails BHI incorporation documents prepared by the BHI-Retained Attorney to establish BHI as a 501(c)3 organization.

The DED COO requests that REDI reimburse Scheer for the $12,500 that was fronted during phase I.

November 2011

The Current ACAO Representative e-mails a one-page summary and frequently asked questions regarding BHI to a member of DED Staff.

On November 16, 2011, the BHI-Retained Attorney files incorporation paperwork with Maryland for Biohealth Innovation, Inc, a 501(c)3 nonprofit corporation. CSC-Lawyers Incorporating Service is listed as the resident agent.

An IRS letter addressed to BHI is received by the DED COO. The Former DED Director tells the DED COO to send it to the Current ACAO Representative.

The Current ACAO Representative e-mails that s/he wants to possibly enter into an agreement with the Chinese Biopharmaceutical Association (CBA) to exchange free space at BHI for Chinese investments/companies and for CDED to sponsor its CBA annual gala again for $2,000.

December 2011

An e-mail from MCDED addresses changes in the approval process for BHI expenses to be processed by REDI, allowing the Consultant/BHI CEO to approve payments up to $10,000, but requiring Board approval for payments over $10,000 (with the exception of the Consultant/BHI CEO contract payments, which will continue to be approved by DED.)

> *OIG Observation:* On December 13, 2011, Council Resolution 17-331 was introduced proposing to give $500,000 per year for three years to BHI ($250,000 in FY12, $500,000 in each of FY13 and FY14, and $250,000 in FY15).

January 2012 – February 2012

BHI e-mails a spreadsheet indicating cashflow to date with a request for DED to be reimbursed for the $20,000 they advanced.

A $250,000 Supplemental appropriation to BHI was approved by the County Council on January 30, 2012, to be paid with EDF funds. The Former DED Director testifies before Council in support of that supplemental appropriation. The Current ACAO Representative prepares the draft testimony for the Former DED Director.

The Current ACAO Representative distributes via e-mail the agenda for BHI's first board meeting scheduled for January 25, 2012 at the JHU Rockville Campus. In addition to many of the companies that are known to have previously made contributions to BHI, representatives from two development companies with interest in the County's Life Sciences Centers are copied on the e-mail.

July 2012

BHI submits an invoice via e-mail to DED for a FY13 contribution of $500,000.

August 2012

The Consultant/BHI CEO forwards correspondence he received from a pharmaceutical and medical device market analysis trade group to the Current ACAO Representative and the DED COO. The correspondence is regarding a possible BHI collaboration with a Korean company.

November 2012

A Research Associate at JHU School of Medicine e-mails the Current ACAO Representative to set up a meeting between the delegates of *"Chungbuk Technopark, a government-sponsored organization to boost technology based small business in their Province"* (OIG emphasis added) and BHI to explore collaboration between BHI and Chungcheongbuk-do. The Research Associate at JHU School of Medicine eventually schedules the meeting directly with BHI.

March 2013

The DED COO requests that BHI pre-send an invoice for FY14 County funding dated July 1, 2013. BHI responds with the invoice.

April 2013

A member of DED Staff e-mails an OCA Staff Attorney (and copied to the DED COO) to ask if DED can allow BHI to sponsor the Montgomery County Small Business Awards Luncheon. During the discussion with OCA, the DED COO states:

- *"DED has absolutely no control of BHI. BHI is doing the sponsorship in their accord for their own benefit to satisfy their board approved work elements."*
- *"BHI receives funding from the County, and that funding is loaded in DED's budget. However, DED just pays the invoice as the arrangement is neither* [a] *contract nor MOU"*

Aronson, LLC conducts a BHI financial statement audit and wants the DED COO to confirm the County commitment of $500,000 per year for three years. The DED COO does so.

The DED COO claims to set up a visit for the "Korean president" to Shady Grove Innovation Center in May 2013. The DED COO requests a presentation from BHI staff. Then, a purported schedule conflict with the Korean president's meeting with U.S. President Obama causes the meeting to be set up with a "Minister of Science and Knowledge" Department instead. The visit does not take place.

February 2014

The BHI-Retained Attorney files incorporation paperwork with Maryland for BHI Management, Inc., a for-profit corporation formed for the purpose of investing in, supporting, developing, testing, and selling life science and health care related drugs, technologies, and products, including investing and providing advisory services to producing entities.

April 2014

The DED COO was asked to clarify for the County Council why BHI funding was extended beyond the initial 3-year commitment. The DED COO asked for an additional 3-5 years of County funding until BHI could mature into a self-sustaining organization.

July 2014

In an e-mail, BHI submits suggested FY14 performance metrics to County Stat.

September 2014-November 2014

An e-mail conversation among the DED COO, the former DED Deputy Director, the Former DED Director, and the Consultant/BHI CEO discusses how to frame a request to the County Executive to extend BHI funding.

In an e-mail to the Consultant/BHI CEO with the Former DED Director copied, the DED COO suggest edits to the Consultant/BHI CEO's draft letter to County Executive Leggett that discusses an additional three years of BHI funding.

December 2014

BHI requested and the Former DED Director approved a $5,000 DED sponsorship for BHI's Maryland Regional Biotech Forum to be held in March 2015.

January 2015

A series of e-mail discusses reserving 4-5 offices in Rockville Incubator to host a BHI Accelerator to be funded with $250,000 in monetary support plus the space donation from Montgomery County. Montgomery County may also incur renovation costs.

E-mail conversations set an overall accelerator budget of $957,500, consisting of $457,000 operating expenses, $100,000 rent, and a $400,000 stipend is discussed. There is also some discussion of whether the County will receive equity in companies. An undated one-page handout describing a preliminary timeline, budget, and other information for Relevant Health indicates that companies will be able to participate in exchange for providing an 8% equity stake in their companies.

March 2015

The DED COO states that County Executive recommended a FY16 budget that includes a $250,000 grant to BHI, and he feels comfortable advancing $100,000 to BHI in FY15. The DED COO requests that BHI submit an invoice, stating *"County's Partnership funding for the BHI Accelerator."* BHI provides an invoice to the DED COO, and the DED COO responds to BHI that they should expect a check the week of March 22, 2015.

The DED COO then instructs the Scheer COO to pay the $100,000 invoice and forward the check to the DED COO and then correct the previous life sciences invoice from $85,000 to $185,000 to cover the cost. The DED COO receives Scheer's invoice for $185,000 from the Scheer COO, and requests a correction to the revised invoice so that it does not mention the accelerator, but only states "Life Sciences Impact Grant." The DED COO then e-mails a member of BHI's staff that he has the check and states that the County's commitment in FY16 is $250,000 and remaining $150,000will be paid in July 2015.

June 2015

BHI sends a $650,000 invoice dated July 1, 2015 to the County for BHI funding ($500,000) and funding for BHI Accelerator ($250,000 minus a $100,000 initial payment in March 2015). Within the e-mail the BHI Accelerator is also referred to as the Relevant Health Accelerator Project. The County paid the full amount of the invoice by end of July 2015.

August 2015

The REDI Board votes to utilize the remaining RIC sponsor funds to support the Relevant Health Accelerator. There is discussion of using the $21,892 amount for renovations and furniture. The DED COO was to invoice REDI for this amount.

A subsequent e-mail from BHI acknowledges receipt of the $21,000 check and asks the DED COO whether BHI should pay the County the same amount or send it to MEDCO/Scheer directly.

September 2015 - November 2015

The DED COO signs a commitment to provide BHI with $500,000 per year during FY16-FY18.

BHI Management, Inc. (BHIM) files incorporation paperwork with the State of Maryland for Relevant Health Holdings I, LLC. The BHIM President is named as the resident agent. The purpose is listed as "to expand opportunities for health technology entrepreneurs by facilitating intensive support for strategy and product development of Health Tech businesses." As of June 2018, the business is not in good standing with the State.

The Consultant/BHI CEO requests a 2 page "incubator transition plan" from the DED COO and inquires about the County investing in Orgenisis, a BHI client which has raised $9 million of $10 million needed to open a manufacturing facility in Montgomery County. The DED COO states he will provide the plan, but will need to fill out a form for client (Orgenisis) and inquires if the Consultant/BHI CEO would like the DED COO to "Wind up the state folks as well" on Orgenisis matter. The DED COO submits 2-page summary of GIC to the Consultant/BHI CEO for presentation to the Board. The summary proposes that BHI operate BHI with all base facility costs provided by County, i.e. cost-free at zero occupancy for BHI.

The Consultant/BHI CEO submits the Orgenisis development plan to the County. The DED COO replies that the staff reviewed the packet and believes it to be too early for the County's incentive program. The DED COO states that he spoke to people who work for the State, and they are having a similar discussion.

The Consultant/BHI CEO and the DED COO discuss the possibility that BHI will make a significant profit in operating GIC. The Consultant/BHI CEO hypothesizes there could be up to $800,000 in gross profit. The DED COO states that the County hopes to split it with BHI.

The DED receives notice that it is to receive the National Association of Counties Achievement award for the creation of BHI.

The DED COO initials changes to the BHI Commitment Renewal for FY16-FY18.

The BHI Executive Committee agrees to allow BHI to manage the Germantown Incubator. A meeting is scheduled with DED and BHI to discuss next steps "*including Rockville discussion…*" Following the meeting, BHI begins to construct a financial summary of Rockville and Germantown incubators for the past five years. Based on an initial Germantown pro-forma, it appears that rents collected significantly exceeded operating costs for 2011-2015. Attached to an e-mail is BHI's Proposed Incubation Plan which references BHI's intention to keep GIC profitable and BHI receiving minority equity ownership in some of the businesses.

January 2016

BHI provides the DED COO a Management Charter for BHI Management of Montgomery County Innovation Centers. It appears that BHI intends to evaluate potential tenants like a venture capital firm would. Although BHI intends to use the existing license structure, rates, and escalation for effectively leasing the facility, tenants may also obtain "Value-added services" by signing a separate agreement with BHI, wherein BHI receives additional compensation through a consulting agreement fees or a significant or minority equity position in the company. Equity considerations will be held by BHIM, the wholly-owned, for-profit subsidiary. BHI will continue to operate its accelerators, DreamIt Health, and Relevant Health, which is operated out of the Rockville Incubator. Other BHI partners are MITRE Corporation and Product Savvy Consulting, which runs Relevant Health. BHI will explore using the brand "Relevant Labs" to support technology development at the Rockville Incubator. BHI wants operational costs, including salary, for an Incubation Services Manager paid by Montgomery County (through MEDCO).

Following receipt of the Management Charter, the DED COO tells the Consultant/BHI CEO that he is preparing a decision memo to obtain the County Executive's approval for BHI's management of GIC. RIC is still "*flexible*."

February 2016

The Chairman of the Board of the newly-formed public-private partnership, the Montgomery County Economic Development Corporation (MCEDC), agrees to commit $25,000 to Relevant Health if funds are matched by the State, and another $25,000 if another good cybersecurity incubator is found. The CAO asks the DED COO how to process the invoice which is sent to the DED COO and the Former Acting DED Director by the Current ACAO Representative.

The DED COO responds:

> "Expending funds in support of MCEDC set up is one thing, and justifiable. However, expending and engaging in a program activity without CEO [*sic*, CEX], without approved budget/strategy,

and without [a] binding agreement/contract with the County will be undesirable in my opinion. However, if we are ok with MCEDC Board engaging in program activities regardless, then my response is that as long as we have agreed to fund them in FY16 to the tune of up to $500,000, we can pay their invoice (obviously, a commitment letter from the State will be desired) with proper approval from their side." the DED COO also states that Buchanan will need to generate a proposal letter/sponsorship request.

Montgomery College begins to ask questions about BHI obtaining control of GIC. The Former Acting DED Director writes to the CAO in opposition to the College having a formal role in the negotiations. The Former Acting DED Director states that s/he has proposed a contract between BHI and MEDCO which will be overseen by the DED COO. S/he suggests that BHI and the College create a separate collaborative agreement.

March 2016-April 2016

A one-page summary of the Relevant Health Accelerator is provided to the Current ACAO Representative and the DED COO for use in preparation of the County's 6-point economic plan.

FY17 Accelerator funding is $110,000 (value of lost rent revenue at RIC), FY16 funding was $448,000 ($250,000 seed, $110,000 rent subsidy, and $88,000 for renovation and furniture).

The DED COO tells the Consultant/BHI CEO that MCDED has two MOUs with China and Chungcheongbuk-do but "all BS". He says it took him 9 years and 3 governors to finalize the Chungcheongbuk-do partnership, but he terminated it after three years because of non-action and ridiculous demands.

There is a discussion of budgets at GIC and RIC between BHI and the DED COO. The DED COO makes changes to the GIC budget.

The DED COO works with the OCA to finalize a Master Management Agreement for GIC and RIC between the County and MEDCO. He also plans to execute contract between MEDCO and BHI (GIC), MEDCO and BHI/MITRE (RIC), and MEDCO and CommuniClique (For SSIC), Mitre will operate RIC. BHI provides a draft Management Plan for RIC. The DED COO wants to meet with MEDCO, hopefully with a completed contract, in May 2016.

May 2016

The Consultant/BHI CEO queries why the Council meeting regarding BHI funding did not include any appropriation for Relevant Health. Both the DED COO and the Former Acting DED Director state that the original $250,000 appropriation was one time.

Later that same day, the Consultant/BHI CEO e-mails the DED COO "*Houston…We have a problem!*" The DED COO then sends an internal e-mail stating that a supplemental appropriation may be needed for Relevant Health. He references the use of the Accelerator by BHI and Mitre. The DED COO then tells the Consultant/BHI CEO "*Houston is listening and scrambling to bring the crew home,*" and asks the Consultant/BHI CEO to develop a project proposal and timeline. The DED COO is admonished by Office of Management and Budget staff for sending a supplemental request to the DED Council Staff Analyst without discussion with appropriate people.

June - August 2016

BHI inquires about whether they should send an invoice for the annual $500,000 contribution, which is separate from the incubators, Relevant Health, etc. The DED COO responds: "*Please wait till my notice. I am trying to insert a provision in the County's Agreement with MEDCO so we can funnel the $500,000 to MEDCO and MEDCO can release that grant to BHI without a contract. If not, BHI will have to enter into a contract with the County (Department of Finance) and it can be time consuming…"* In the end, BHI's $500,000 is added to MEDCO agreement.

It appears that the Former Acting DED Director is using a former Councilmember to find opportunities for BHI. In an e-mail between the two, the Former Acting DED Director states:

> "Since we are on a roll, let me fill you in on BIO and next steps. I was unable to get any meetings with pharma, so you should take the research you did and use it in the update of the life sciences strategy that is due before this contract runs out. I did get 4 disease foundation meetings which I dragged [the Consultant/BHI CEO] to. The one with Epilepsy was particularly good; Mitochondrial is very small but may have interest in a consortia approach; Sarcoma is local so [the Consultant/BHI CEO] will follow up with them…also very small so would likely be a similar approach to the Mitochondrial one; Alzheimers Drug Discovery Foundation may be a candidate for further conversation…interested but not as excited as Epilepsy. We also met with the Cleveland Clinic folks and BHI may be able to get something going there. They have an on-going relationship with Medstar for their innovation work…interesting. Absent a disease foundation strategy plan and time to get information on work being done locally that might be of interest to specific foundations, I chose to use the entre to create a relationship with them for BHI, which I think will pay off in a different but important way with BHI as the intermediary for local companies as well as potentially providing EIR scouts for the interests of the various foundations.
>
> So, I think if you can wrap up the report on the Impact Grants and update the life sciences strategy, those would be major steps. I have not looked since our meeting several weeks ago at the other deliverables. Perhaps we can touch on those next week."

The Consultant/BHI CEO asks the DED COO if the Former Acting DED Director has anything in the budget for Relevant Health year 2 or the Cyber Accelerator with Mitre. The Consultant/BHI CEO states that the Former Acting DED Director told him $250,000 each at an earlier meeting. The DED COO responds that he told the Consultant/BHI CEO a month ago that they had not budgeted for those items.

There is discussion of a delay in a reaching new Grant and Management Agreement with MEDCO. The DED COO tells the Consultant/BHI CEO that as long as the grant agreement between the County and MEDCO is executed, the County can trigger a $500,000 payment to BHI without waiting for contract between BHI and MEDCO.

A July 8, 2016 Draft agreement between BHI and MEDCO gives BHI latitude to develop screening, admittance, and evaluation criteria. BHI is to get 75% of profits (deposits exceeding operating costs). The County seed fund is considered part of deposits. BHI may enter into separate contracts with licensees.

The Consultant/BHI CEO states that he is ready to execute a contract with MEDCO on July 14, 2016. However, the MEDCO Incubator Program Manager is on vacation.

As of July 18, 2016, the Grant Agreement between the County and MEDCO has not been executed. Neither has the Management Agreement. The DED COO promises to fund $500,000 to BHI by the end of the month, regardless of progress on BHI-MEDCO agreement.

The DED COO gives instructions for BHI's invoice for the $500,000 annual contribution.

BHI provides ACH banking info.

On July 21, 2016, the Grants Agreement is executed, and the DED COO provides the BHI invoice to MEDCO. On July 27, 2016 BHI receives its check via FedEx.

BHI counsel asks to see the County Contract with MEDCO. The DED COO determines he wants a consolidated Management Agreement (vs a Grant Agreement) and states that this hasn't been signed yet.

MEDCO, the County, and the Consultant/BHI CEO continue to work on revisions to the management agreement and budget. The Consultant/BHI CEO does not want to continue to pay for the County's Sales*f*orce licensing out of the GIC budget. The DED COO admits to funding DED broader program expenses out of GIC. RIC will operate at a loss without County subsidy, which concerns BHI.

Scheer, rather than MEDCO, will be maintaining the operating account for GIC. The DED COO asks that MEDCO transfer $100,000 to seed fund the account in anticipation of the transition to BHI management of GIC on September 1, 2016. RIC is to be handled similarly. There is a bit of pushback from the MEDCO Incubator Program Manager, who wants mechanism to track and approve BHI expenses on the front end. He also believes there should be a separate deposit account that receives all income from the GIC, which can then be disbursed to the operating account to cover expenses. Scheer states that GIC does not have a deposit account, so MEDCO will need to do that.

September 2016

A draft of a one-page notice to GIC licensees that BHI is taking over and a draft MOU between Montgomery College and BHI are discussed via email.

There is email discussion of County FY17 and FY18 County grant and associated budgets for GIC. The DED COO recommends $110,000 from the County in FY17 and another $50,000 in FY18 based on the budget projections. The budget is approved by the Consultant/BHI CEO.

The DED COO states that the approved annual seed fund is $110 ,000 every year for RIC. BHI transmits RIC documents signed by the Consultant/BHI CEO, including the RIC Management Agreement, FY17 and FY18 operating budgets. The DED COO then asks for a correction to FY18 budget.

October 2016

BHI transmits its first Monthly Incubator Report. BHI states that it is still in evaluation mode but will need to make decisions regarding licensee graduations soon.

November 2016

BHI transmits its second Monthly Incubator Report and states that the initial evaluation period is over and their next steps require action and key decision making.

BHI states that they met MEDCO requirements to execute a MOU with MITRE. MITRE's role appears to be largely technical, and MITRE may charge licensees fees or equity for its services. Attachments include the MOU signed by BHI and one-page document describing MITRE.

January 2017

BHI sends an incubator monthly report which identifies 3 companies identified for license expiration: All Counted (RIC), Afilon (GIC), and Biologics Resources (GIC).

BHI emails outcomes for its first 5 years in business along with its draft plan for 2017.

The DED COO asks the Consultant/BHI CEO to help his niece, who is graduating from UMD Pharmacy, with her job search. The Consultant/BHI CEO sets up interviews with key BHI staff members. It does not appear she is hired by BHI.

The PHED committee wants to be briefed on the incubator transition on March 2, 2017. The briefing is subsequently canceled, but the Council expects to be fully briefed during FY18 budget meetings and wants every party involved in Incubator projects prepared to present.

February 2017

BHI submits an incubator monthly report with the previously identified companies scheduled for graduation: All Counted (Rockville Innovation Center) -March 31, Afilon (Germantown Innovation Center) – March 31, and Biologics Resources (Germantown Innovation Center) – June 30,

March 2017

It appears that a company named Arcellx will be paying $135,000 in renovation costs for the conversion of clean room to labs. Arcellx will get the use of the labs rent free to offset its investment. The DED COO pledges to pay costs in excess of $135,000 "up to $65,000 without further communication." The arrangement is to be revenue neutral for BHI/MEDCO as the clean rooms do not generate revenue at this point.

The BHI incubator monthly report includes a listing of current incubator companies and those in the pipeline.

BHI provides the DED COO a one-page progress report. BHI states that it has received $15 million in grants, created 235 jobs, owns equity in 32 portfolio companies, and has assisted those portfolio companies in obtaining $87 million in follow-on funding.

BHI provides a PowerPoint regarding the incubators which includes metrics, licensee info, etc. Scheer remains the facility management subcontractor. There is a steering committee composed of representatives from BHI, MCEDC, MEDCO, Montgomery College, and DoF.

BHI provides a Relevant Health program report in response to the DED COO's questions regarding the FY18 CE recommended budget. Seven startup accelerator companies received $100,000 each in investment and services (total $1 million invested by BHI). Relevant Health received 8% of each company. BHI states that there will be no second cohort, as the model is too expensive for BHI. BHI attaches the annual report for Relevant Health which lists an additional $800,000 in investments secured for the Relevant Health start-up companies and $243k in debt to BHI Management, Inc.

In order to respond to Council staff, the DED COO wants to know what BHI will do with $125,000 provided for a second cohort at Relevant Health. BHI wants to use it to fund a BHI position to raise funding for young biohealth companies. The DED COO questions this response, as it is not directly related to accelerator. BHI replies that it is still using the Relevant Health space but cannot subsidize an accelerator program similar to the previous year unless other funding obtained.

BHI is expected to present at April 26, 2017 PHED work session.

August 2017

MEDCO signs a FY18 grant agreement with BHI. There is no signature from the Consultant/BHI CEO on the copy obtained by the OIG. The FY2018 grant to BHI will be $750,000 ($625,000 for County Biohealth and $125,000 for a staff position). Quarterly reports are required, and the County and MEDCO have the right to audit.

> *OIG Observation: The first instance of a County audit of MEDCO was initiated a result of evidence of the DED COO misappropriation of funds.*

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Relevant Statutes, Policies, and Practices

Statutes and Regulations

County Code § 11B-41 provides that "[t]he County may without competition enter into a contract for the procurement of, use of, or sale of goods, services, or construction, with a public entity when it is in the best interest of the County." Public entities include non-taxable corporations that are incorporated by State or local governments for the exclusive purpose of supporting or benefiting those governments.[55]

DED's arrangements with MEDCO, which was created by the State[56], and REDI, which was created by the City of Rockville[57], were thus exempt from County competitive procurement requirements. In addition, MEDCO, by statute, is not subject to the Maryland General Procurement Law.[58]

Montgomery County regulations[59] provide that "A public entity procurement does not require public solicitation, nor does it require justification as a non-competitive procurement." A public entity procurement need not comply with County wage requirements[60] or County requirements to purchase from local small businesses.[61]

Certain other County procurements are also exempt from County procurement laws. The County Code §11B-4 lists 11 exemptions from procurement requirements for certain procurements, such as obtaining electricity under executive regulations and obtaining advertising services. In addition, the Procurement Chapter of the Montgomery County Code states that it applies to expenditures of public funds to acquire goods, services, or construction, but real estate is excepted from the definition of "goods".[62]

However, public entity procurements are not exempt from County regulations regarding contracts. COMCOR 11B.00.01.03.3 provides that a written contract document is required in

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55 County Code §11B-1.
56 Md. Econ. Dev. Art. 10-105.
57 REDI website http://rockvilleredi.org/about/who-we-are/ last accessed June 7, 2018.
58 Md. Econ. Dev. Art. § 10-111(a)(1)(ii)(3)(J).
59 COMCOR 11B.00.01.04.1.14.1.
60 County Code §11B-33A, §11B-33C.
61 County Code §11B-66.
62 County Code §§ 11B-1, 11B-3.

connection with all procurements of goods, services, or construction in Montgomery County for over $10,000, with certain exceptions not relevant to this report[63]. COMCOR 11B.00.01.02.4.18 provides that grants are contracts, and all contracts must be in writing.

In addition, County regulations require that a contract for a value greater than $100,000 be submitted to the Office of the County Attorney for review and approval, unless the County Attorney has authorized an exception in writing.[64]

There was no formal requirement in place prior to May 2018 that described the process to exempt programs or purchases from procurement regulations, or defined the roles and responsibilities of each stakeholder.

Accounts Payable Policy

The current Accounts Payable Policy in place since August 2017[65] states that invoices for direct payment to public entities are exempt from the County's competitive procurement, but must be presented for approval accompanied by a signed and dated copy of the most recent relevant terms of the Contract or MOU agreement.

Budget formulation, budget execution, vendor engagement and management, and invoice processing and approval are responsibilities normally expected to be implemented and managed with appropriate segregation of duties within individual departments and offices within County Government.

Prior to August 2017, segregation of duties under the County's decentralized management concept was expected but there was no external system of enforcement.

On August 2, 2017, DoF implemented the Accounts Payable Policy, *Financial Governing Principles and Standards*, which:

- Strengthened segregation of duties within each department by requiring that separate persons authorize the transaction, receive the services, and process the invoice. This critical internal control requirement supports three-way matching between authorizer, receiver, and invoice processor.
- Required sufficient documentation supporting payments for exempt transactions, and sufficient information supporting basis for procurement exemption.
- Centralized and improved controls over the Held Check process to require department director level authorization and workflow to identify specific individuals designated to pick up checks.

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63 COMCOR 11B.00.01.03.3; COMCOR 11B.00.01.04.1.9.1.

64 COMCOR 11B.00.01.03.3.1.1; COMCOR 11B.00.01.04.1.8.1 and 04.1.9.1. There are other exceptions that are not relevant to this report.

65 Montgomery County MD, Controller's Division. Accounts Payable Policies: Financial Governing Principles and Standards. August 2, 2017.

- Vendor self-registration – Accounts Payable curtailed practice of accepting vendor information directly from departments. Implemented additional controls and authorizations to register vendors on a limited exception basis.

On April 1, 2018, DoF implemented the Accounts Payable Policy, *Authorized Payment (issued October 2017)*, which:

- Direct payment of invoices (that is, invoices processed without a three-way match and receiving in the system as evidenced by a Purchase Order or Direct Purchase Order) no longer authorized unless pre-determined on a limited basis to be exempt from this requirement.
- Authorized payments via the County Purchasing Card (P-Card), Direct Purchase Order, or Purchase Order.
- The policy ensures purchases are made by authorized individuals, supports segregation of duties, and increases transparency because purchases are reported earlier and/or with more detailed information in the County's financial system.

All direct payment invoices in excess of $10,000 that are not subject to Procurement regulations must be for goods, services, or commodities represented on the Payment Method Procedure document maintained by the Office of Procurement.

The previous Accounts Payable Policy that was in place between October 2014 and August 2017[66] did not address the public entity and goods, services, or commodities exemptions, but both policies required that approvers should insure that the proper supplier is being paid, for the goods/services received, and that checks to suppliers must not be held after printing for the purpose of hand delivery to the supplier.

The OIG was advised by the County's Controller that a Countywide Accounts Payable Policy did not exist prior to October 2014. Rather, invoice payment policies and procedures were maintained by individual departments. We understand that training material and individual guidance memos were posted on the intranet site but not formalized in official policy or procedure documents. With respect to Accounts Payable's (A/P) processing & approval for items using exempt commodity coding, we were advised:

> "Finance did not have a formal policy or procedure for the review of commodity coding related to A/P payment transactions that required A/P to determine the accuracy of the commodity code used or whether sufficient support existed. Years ago, the County decided to decentralize certain controls related to the A/P function to the departments. Thus, A/P relied on segregation of duties at the department level and proper sign-off of payment requests unless certain information in an exempt payment packet violated any existing County policy. For example, if A/P received an exempt payment request for $200,000 and the commodity code used was for utilities, but the invoice was for construction, A/P would return it to the departments. However, if the exempt payment request was to PEPCO for $200,000 and the commodity code was for utilities, and it had proper sign-off, A/P would pay it."

[66] Montgomery County MD, Controller's Division. Accounts Payable Policies: Financial Governing Principles and Standards. September 25, 2016.

Internal Controls

The Government Accountability Office of the Comptroller General of the United States has established The *Standards for Internal Control in the Federal Government* (known as the Green Book)[67] to provide the overall framework for developing and maintaining an effective internal control system.

The Green Book establishes five *Components of Internal Control* that are applicable to an organization - Control Environment, Risk Assessment, Control Activities, Information and Communications, and Monitoring. Each component is further developed to address control *Principles* and *Attributes* that support the Components of Internal Control.

Discussions regarding the following *Components of Internal Control*, *Principles*, and *Attributes* are evident within this report, with two *Attributes* - *Tone at the Top* and *Segregation of Duties* - developed in some detail.

Control Environment

- Principle 1 - Demonstrate Commitment to Integrity and Ethical Values, inclusive of the *Attributes: Tone at the Top*, Standards of Conduct, and Adherence to Standards of Conduct.
- Principle 2 - Exercise Oversight Responsibility, inclusive of the *Attributes:* Oversight Structure and Oversight for the Internal Control System
- Principle 3 - Establish Structure, Responsibility, and Authority, inclusive of the *Attributes:* Assignment of Responsibility and Delegation of Authority, and Documentation of the Internal Control System.
- Principle 5 - Enforce Accountability, inclusive of the *Attribute:* Enforcement of Accountability

Control Activities

- Principle 10 - Design Control Activities, inclusive of the *Attributes:* Design of Appropriate Types of Control Activities, Design of Control Activities at Various Levels, and *Segregation of Duties*.
- Principle 12 - Implement Control Activities, inclusive of the *Attribute:* Periodic Review of Control Activities

Monitoring

- Principle 16 - Perform Monitoring Activities, inclusive of the *Attribute:* Establishment of a Baseline, Internal Control System Monitoring, and Evaluation of Results
- Principle 17 - Evaluate Issues and Remediate Deficiencies, inclusive of the *Attribute:* Reporting of Issues, Evaluation of Issues, and Corrective Actions

[67] Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government*. Government Printing Office, September 2014. See "What is the Green Book and how is it used? Important facts and concepts related to the Green Book and internal control".

Computer Security

Montgomery County issued Administrative Procedure 6-7 - Information Resources Security (AP 6-7) effective May 4, 2005. The Montgomery County Department of Technology Services issued Computer Security Guidelines (Guidelines) effective March 23, 2009. Both documents generally prohibit the sharing of log-in information such as passwords (allowed in certain circumstance with prior approval of department management and the DTS Security office - see AP 6-7 §4.4(B.) and Guidelines §§5.2 & 9.1).

a. AP 6-7 §4.4(B) provides that "The following are required to protect the identification and authentication of users of a County Information Resource:

   Employees must not share identification controls."

b. AP 6-7 §3.6 provides that "A County employee who violates this administrative procedure may be subject to disciplinary action, in accordance with Montgomery County laws and executive regulations, including Personnel laws and regulations, and Ethics Laws, currently codified at Chapter 33, COMCOR Chapter 33, and Chapter 19A of the County Code, respectively, and applicable collective bargaining agreements, as amended. Violation of this procedure is prohibited and may lead to disciplinary action, including dismissal, and other legal remedies available to the County."

c. Guidelines §2 states "Connection and access to computing resources is controlled through unique user identification (user-ids) and authentication (passwords). Each individual granted this privilege is responsible and accountable for work done under their unique identifier."

d. Guidelines §5.2 states "Passwords will be individually maintained to ensure confidentiality and individual accountability. Passwords will not be shared with others."

e. Guidelines §5.4 states "Do not disclose user-ids, passwords or other sensitive information to anyone without verifying their authorization to have this information.

   The following statement is wording that will be displayed to users before they are granted computer access. This warning banner will appear each and every time that someone logs into a County computer:

   UNAUTHORIZED ACCESS TO THIS NETWORK DEVICE IS PROHIBITED. You must have explicit permission to access or configure this device. All activities performed on this device may be logged, and violations of this policy may result in disciplinary action and may be reported to law enforcement. There is no right to privacy on this device.

Objectives, Scope, and Methodology

The Office of the Inspector General undertook this review after becoming aware of the misappropriation of funds by the Chief Operating Officer of the former Montgomery County Department of Economic Development. Our review covered the period of Fiscal Year 2006 through Fiscal Year 2018.

We did not review all the functions of the former DED. Activities formerly provided by the DED, including the County's Incubator Program and bioscience intermediary activities, were reviewed in this report. Other former DED activities - agricultural preservation and enhancement functions, workforce development, the Economic Development Fund, and economic grants – are not included within the scope of this review.

In early April 2017, The Montgomery County Office of the County Attorney received a summons from the Internal Revenue Service requesting all records in possession of Montgomery County, Maryland, related to its business with, among other parties and entities:

- The DED COO, the former Chief Operating Officer of the Montgomery County Department of Economic Development;
- Chungbuk Incubator Fund LLC ("CBIF"), which received payments from the DED;
- Chungcheongbuk-do Province, a Province of the Republic of Korea with which Montgomery County had had a relationship for mutually beneficial economic development; and
- The CB Liaison/CBIF Manager, a member of Chungcheongbuk-do Province's Exchange Staff.

Upon receipt of the summons, the County began its own review of transactions related to these parties.

In early May 2017, a member of the Montgomery County State's Attorney's Office met with the County Inspector General (IG) to discuss the ongoing criminal investigation involving DED COO. At that time, the inspector General agreed to not to initiate and further to suspend any ongoing audit activities that might involve or be related to DED COO in order to avoid inadvertently interfering with the criminal investigation. Subsequently, The County Attorney asked the Inspector General to participate in his staff's briefing of the County Chief Administrative Officer (CAO) at which time they provided specific evidence of several improper transactions and other related facts.

The County CAO subsequently advised the IG of his intent to immediately engage his staff along with any necessary contract expertise to perform a review of existing accounting controls and fully investigate and identify all potentially fraudulent or inappropriate transactions, including those related to the former DED and related parties. The County Office of Internal Audits engaged the accounting firm of SC&H Group to evaluate the internal controls related to the County's oversight of specific aspects of Procure to Pay operations as they existed at the time of their review. During the project, the objectives of the review were refined to focus on the identification of process and control deficiencies related to agreements for programs that are exempt from, or not subject to, procurement regulations. The Office of the County Attorney retained the accounting firm of Baker Tilly Virchow Krause to conduct the forensic investigation. We agreed that the IG would participate in this effort.

The role of the IG, to complement the efforts of the County and avoid duplication of effort, was to review all of the related reports and recommendations and, along with our independent work, comprehensively identify systemic problems and related financial and broader management control deficiencies over the multi-year period and recommend effective remedies.

For the purposes of our review, we used the U.S. Government Accountability Office's *Government Auditing* Standards definition of internal controls which includes the processes and procedures for planning, organizing and directing and controlling program operations, and management's system for measuring, reporting, and monitoring program performance.

We attempted to:

- Identify all DED and County Business Innovation Center payments and receipts diverted by the DED COO, and determine the amount of those funds that were paid to the Chungbuk Incubator Fund LLC, CBIF related persons of interest, and any other entities by the County and its contracted economic development partners,
- Review the documents and communications related to the operation of the Incubator Program, and the flow of payment requests and disbursements to determine how the Chief Operating Officer could misappropriate County and incubator licensee funds, and
- Determine any management and other control weaknesses that enabled the misappropriation to go undetected.

During the course of our work, we became aware of two payments totaling $270,000 to Rockville Economic Development, Inc. (REDI). Both payments were approved by the DED COO. Preliminary review identified one of the items as a payment toward the engagement of a consultant to develop an implementation plan for a County Executive task force-recommended bioscience intermediary. The second was identified as a payment of a County Council-appropriated grant that passed through REDI to the subsequent operator of the intermediary. Because these payments exhibited the same pattern of management circumvention of financial and procurement controls that we had observed in our ongoing work, we expanded the scope of our review to include a review of DED management's engagement of BioHealth Innovation.

The OIG's work on this investigation faced external impairment due to an ongoing criminal investigation into this matter by the United States Department of Justice and the Office of the State's Attorney for Montgomery County Maryland. Our professional standards caution that we must avoid interfering with an ongoing investigation or legal proceeding; thus, we deferred work on those portions of the investigation engagement that could present an inadvertent interference. From the documents, records, and evidence that were available, we could draw the conclusions we present in this report, and observe that internal controls that should have prevented or detected the DED COO's improper acts either did not work as designed, or had not been implemented. Because of the ongoing investigation and legal proceedings, we were not able to:

- Interview all those individuals who knew or should have had knowledge about these activities, the DED COO's role, Management's oversight, and the internal controls that should have been in place,
- Test for the presence and effectiveness of the controls, and
- Obtain additional physical and testimonial evidence that may have factored into the formulation of our conclusions.

We reviewed the financial activities of the Montgomery County Business Innovation Network from FY 2006 through FY2016 within the County's financial systems and those of the Incubator Program Contractor and Sub-Contractor. Our review of the Incubator Program Contractor and Sub-Contractor was limited to the financial records they provided, but our review of County activity included the database we obtained during an earlier Computer Assisted Audit Techniques review of the County's accounts payable system, and via data available through the County's Oracle Enterprise Resource Planning (ERP) system. Review for payments to suspected persons and entities within County systems was not limited to any County department or agency.

We reviewed the financial reports for the Incubator Program prepared by Scheer, and Incubator Program cash register and general ledger records provided by MEDCO. We reviewed general ledger, accounts payable, and purchasing data sets within the County's Oracle Enterprise Resource Planning Business Intelligence (BI) and Reporting. We reviewed budget documents and Council Committee packets related to the operations of the Department of Economic Development and the Incubator Program, but due to the external impairment did not interview the Council or the County's Management and Budget Office staff who would have been familiar with those budgets. We reviewed operating and grant funding agreements that existed among the County, MEDCO, Scheer, and other entities related to the operation of the incubators. We reviewed e-mail correspondence provided by MEDCO and Scheer in response to Federal summonses they received. We obtained and reviewed over 30,600 pieces of DED COO-retained e-mail correspondence and calendar entries extracted from the DED COO's computer for the period beginning August 2002. Correspondence with Korean-speaking individuals was translated with the aid of Google Translate.[68] We presented the context of those conversations in most cases, but did extract some Google Translation quotations on a limited basis. Such translated quotations are noted within the body of the report.

We coordinated our work effort with that of a collaborative working group established by County Management to conduct a complete review of the procure to payment cycle within Montgomery County government operations, and specifically within the then DED. The accounting firm of SC&H Group was engaged by the County Office of Internal Audit to conduct a focused internal control review to evaluate the internal controls related to the County's oversight of specific aspects of Procure to Pay operations as they existed as of the time of their review. The Office of the County Attorney engaged the accounting firm of Baker Tilly Virchow Krause to prepare its *Report of Forensic Audit to Montgomery County, Maryland* to perform a forensic investigation of financial transactions and activity of the DED, and investigate and

[68] Copyright 2018 Google Inc. All rights reserved.

identify all potentially fraudulent or otherwise inappropriate transactions, including those related to Chungcheongbuk-do Province, Korea, the Chungbuk Incubator Fund, LLC, and the former DED COO. At our request, the Office of the County Attorney added a reconstruction of the flow of County funds into and out of MEDCO and Scheer, and interviews with selected incubator licensees to an expanded Baker Tilly scope of work. SC&H, Baker Tilly, and the OIG worked cooperatively to share any information through the Office of the County Attorney to ensure an exhaustive review of County data.

We have considered and concur with the recommendations contained in the SC&H/Office of Internal Audit's report *Internal Control Review: Procure to Pay – Specific Functions*, as well as those contained in the Baker Tilly Virchow Krause *Report of Forensic Audit to Montgomery County, Maryland* referenced above. We believe that the County must develop corrective action plans to implement these recommendations.

We conducted this review in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

We provided our confidential final report to management on November 5, 2018 and requested their formal comments for inclusion in the final report to be released to the public. Prior to receiving management's comments, the DED COO entered into plea agreements with the United States Department of Justice and the Office of the State's Attorney for Montgomery County Maryland. We revised our report date to November 19, 2018 in order to include the Stipulated Facts from the DED COO's plea agreement with the United States.

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Summary of the Chief Administrative Officer's Response

The response from the Montgomery County Chief Administrative Officer (CAO) to the final draft report is included in its entirety in Appendix A.

The CAO's response did not cause us to alter our findings or recommendations.

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Appendix A: Chief Administrative Officer's Response

OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

November 29, 2018

TO: Edward L. Blansitt, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer Timothy L. Firestine

SUBJECT: Response to Final Confidential Draft: *A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds (including Management's Proposed Corrective Actions)*

I am in receipt of Final Confidential Draft: *A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds (including Management's Proposed Corrective Actions)*. We appreciate the work and analyses conducted by the Inspector General and his staff. We believe these analyses complement the reviews and work conducted by the County and its contractors, as noted in the draft report, to better understand the steps the County could take to strengthen the controls and processes designed to ensure that County funds are appropriately used and managed to serve the citizens of the County. As noted in the draft report, once the County became aware of the issues involved in this matter, the County undertook a review of existing controls. The review included internal assessments and reviews, as well as retaining the services of two separate audit firms: one to evaluate the internal controls related to the County's oversight of specific aspects of the procure-to-pay operations and the controls related to Agreements for programs that are exempt from or not subject to County procurement regulations; and the second to conduct a forensic investigation to understand and account for funds that may have been misappropriated.

In response to the findings from the County-initiated reviews, the County took significant steps, as noted in the draft report and further discussed below, to address the factors that allowed the individual to evade the normal controls and processes that exist to prevent fraud and abuse in County programs, and to strengthen those controls and processes. We will continue to monitor, through our internal audit program, the effectiveness of these actions and will ensure that planned corrective actions are fully and timely implemented. Following are the responses to the Draft's findings and recommendations.

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Edward L. Blansitt, Inspector General
November 29, 2018
Page 2

Inspector General Finding 1: Former DED Director used a 2006 agreement with a public entity to escape oversight by County government and create a standing reserve fund for use by the DED Director. The fund's availability increased the risk of improper financial transactions.

Recommendation 1: We recommend that County management provide and ensure implementation of specific and adequate guidance relating to public entity procurement regulations and guidelines for departments and agencies, to ensure they observe the intent of County public entity purchasing laws and appropriate use. It should be emphasized that serious consequences arise when an entity acts in any manner to circumvent contracting, financial, and procurement controls because the entity's management deems them to be an impediment to their operations.

CAO Response: We have addressed this recommendation through a series of actions. First, the Office of Procurement (Procurement), in coordination with the Office of the County Attorney, the Department of Finance (Finance), and the Assistant CAO (ACAO) updated (January 2018) the Public Entity Procurement Checklist (PMMD-108) to clarify those requirements that must be addressed for Procurement to consider a request by a Using Department to execute a Contract with a public entity. This update also incorporated additional controls regarding use of a public-entity procurement. In addition, Procurement updated the contract administrator training to include discussion of the public-entity procurement method and the guidance provided in PMMD-108. Finally, in April 2018, the ACAO issued county-wide guidance regarding the updated Checklist, and the approval requirements implemented to strengthen controls on the use of such Contracts.

Recommendation 1(a): County management should ensure that it divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.

CAO Response: We have taken actions to address this recommendation. Finance published two policies (the first a revision to an existing policy) governing Accounts Payable operations to strengthen the requirements for segregation of duties in invoice transaction processing. In August 2017, Finance's *Accounts Payable Policies: Financial Governing Principles and Standards* strengthened segregation of duties within each department by requiring that separate persons authorize the transaction, receive the goods or services, and process the invoice. This critical internal control requirement supports three-way matching between authorizer, receiver, and invoice processor, for both formal procurements and exempt purchases. In October 2017, Finance's *Accounts Payable Section Policies: Authorized Payment* (effective April 2018) prohibited direct payment of invoices (that is, invoices processed without a three-way match in the system, including both receiving and original purchase authorization as evidenced by a Purchase Order or Direct Purchase Order) unless pre-determined on a limited basis to be exempt from this requirement.

Edward L. Blansitt, Inspector General
November 29, 2018
Page 3

In addition, in July 2018, the ACAO issued a reminder to all County departments of the need for departments to ensure they establish and maintain appropriate segregation of duties within their organization, particularly for financial management responsibilities where County funds are involved. This reminder provided specific examples of the types of financial oversight, contract management/administration oversight, and transaction processing roles that should be performed by separate units or people. The ACAO also required that each department report on how these responsibilities are aligned within their department by providing information regarding the name, title, and organizational unit of the person(s) responsible for performing these roles. A review of the information provided by each department of its alignment of financial and program management responsibilities/duties determined that appropriate segregation of duties was present in all major County departments and programs.

Recommendation 1(b): Periodic rotation of staff with financial responsibilities is a fraud prevention and detection technique. Periodic rotation of managers is an accepted executive development and succession planning technique. We recommend the periodic rotation of career managers among departments to help prevent them from becoming entrenched in their program areas and immune to oversight and administrative or accounting controls.

CAO Response: We recognize the benefits that periodic rotation of managers with financial responsibilities can have. We believe that these benefits must be balanced with the benefits that come from a manager's improved understanding with time in a position of the programs for which they are responsible and the existing controls, as well as the opportunity to assess the effectiveness of existing controls and implement appropriate enhancements to strengthen those controls. We believe any planned rotation needs to be made on a case-by-case basis and after considering all relevant factors. It is also important to acknowledge the importance of ensuring strong and effective compensating controls in County systems and processes. The actions taken by the County to strengthen existing management and financial controls, as referenced in the Inspector General's report and elsewhere in this response, are critical to identifying and preventing both errors and abuse.

Inspector General Finding 2: Over an eleven-year period, the DED COO took advantage of control weaknesses to divert at least $7.2 million from the County's Incubator Program without apparent detection or impact on program operations.

Recommendation 2(a): The County should not disburse payment against any grant or contract prior to execution of a document that sets forth, at minimum:

- the terms and specific enumeration of quantifiable and measurable outputs,
- outcomes to be delivered, as well as when, how, and to whom they will be delivered, and
- Office of the County Attorney, Risk Management, and Office of Procurement contract requirements.

Management should require the awardee to submit verifiable evidence of having achieved the stated outputs and outcomes when submitting subsequent invoices for payment against the award.

Edward L. Blansitt, Inspector General
November 29, 2018
Page 4

CAO Response: Contracts awarded pursuant to Chapter 11B of the Montgomery County Code and implementing regulations (Contracts) require that Using Departments only make payment "after contractor performance has occurred to justify the payments under the contract." Similarly, under interim Administrative Procedure (AP) 2-4, *Agreements between Montgomery County Government and Other Organizations*, issued September 2018, for contractual relationships not subject to Chapter 11B (Agreements), Using Departments are required to "[t]rack and monitor the goods or services provided for purposes of validating that amounts billed are appropriate and in compliance with the Agreement." AP 2-4 also requires "[w]here applicable, the Agreement should include goals, performance measures, deliverables, and a schedule of milestones. If an Agreement is for the provision of goods or services, then the Agreement shall clearly specify what the deliverables are and when they are due."

For isolated situations where advance payments requested by a contractor (typically a one month advance to support cash flow needs) are approved by Finance and incorporated into the Contract, Finance has established processes to account for the advance, and to require that it is reconciled with the receipt of related goods or services, which allows for any final outstanding advance to be returned to the County. Advance payments (for Contracts or Agreements) are authorized if the payment is part of a commercially acceptable practice (as in the case of insurance premiums or licensing fees) or in other cases only after a determination by the Director of Finance, and the Director of Procurement for Contracts subject to Chapter 11B, that an advance payment is in the best interest of the County.

In addition, the revised policies issued by the Department of Finance (*Accounts Payable Policies: Financial Governing Principles and Standards* (August 2017); and *Accounts Payable Section Policies: Authorized Payment* (effective April 2018)) to strengthen existing Accounts Payable policies require that Using Departments approve invoices for payment after determining that goods or services were provided as required under the Contract or Agreement and enter receipt of goods or services against the Purchase Order or Direct Purchase Order in the financial system. These policies further require that Using Departments submit relevant supporting documents to Finance along with the approved invoice as a requirement for payment of the invoice.

Contracts, and now Agreements, must be reviewed by the Office of the County Attorney, and meet Risk Management and, as appropriate, Procurement and Finance requirements prior to execution.

Recommendation 2(b): If the County is using the award to fund the delivery of an out-sourced program or operation, the County should additionally require the awardee to account for the use of the County's funds and require that any surplus funds at the end of the award period be identified and returned to the County, or reappropriated.

CAO Response: This situation would occur in the case of a Contract or Agreement requiring an "advance payment." As noted in the response to Recommendation 2(a), advance payment provisions in Contracts under Chapter 11B have always been subject to additional scrutiny and

Edward L. Blansitt, Inspector General
November 29, 2018
Page 5

approvals by Finance and Procurement. With the implementation of AP 2-4, advance payment provisions in Agreements are now also subject to that same scrutiny by Finance and the Office of the County Attorney. For isolated situations where advance payments requested by a contractor (typically a one month advance to support cash flow needs) are approved by Finance and incorporated into the Contract or Agreement, Finance has established processes to account for the advance, and to require that it is reconciled with the receipt of related goods or services, which allows for any final outstanding advance to be returned to the County. That said, we do agree that surplus funds should be reappropriated, if found to be necessary for program operations. This would require that Contract/Agreement language be included that would make this requirement explicit. We will take appropriate action to ensure that such language is included in any Contract or Agreement requiring an advance payment.

As it relates to the requirement for the awardee to account for the use of the County's funds, Contracts under Chapter 11B include a general term and condition relating to "Accounting System and Audit, Accurate Information" that includes a requirement that " the contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information." Related right to audit language is also included in this provision. For Agreements under AP 2-4 which include advance funds of more than one month, a right to audit and audit access clause is a required provision. Management is currently working with departments to identify any remaining required revisions to the interim AP 2-4; as part of that process the County will evaluate if a general Agreement provision relating to accounting system and audit, similar to language in Contract general terms and conditions under Chapter 11B, should be added to AP 2-4.

Recommendation 2(c): *Audit and review of Third-party Providers*: Prior to awarding the responsibility for accounting for County funds, the County should require independent certification of the accounting systems that the public entity, public-private partnership, or subcontractor will use. Annual financial audits and reviews should be performed when expenditures reach significant (to be determined) dollar thresholds.

CAO Response: As noted in response to Recommendation 2(b), the implementation of AP 2-4 now subjects requests for advance payment of County funds under an Agreement to a level of centralized scrutiny that is similar to that required of Contracts issued under Chapter 11B. Advance payment requests that are approved are also subject to previously established oversight and formal processes by Finance. With the implementation of these policies, the County will be better able to determine the appropriateness of advancing County funds for the conduct of a County program, further limiting the use of such arrangements. As it relates to advance certification of systems and audits, all Contracts require a standard "right to audit" term and condition as part of the award, which also addresses contractor certification of accounting systems. Agreements under AP 2-4 which include advance payments are also subject to right to audit terms, to Finance policies and procedures over advance payments, and to additional oversight to ensure Using Departments have a plan to conduct any required audits. The Department of Finance is developing internal guidelines that would include dollar threshold

Edward L. Blansitt, Inspector General
November 29, 2018
Page 6

triggers for the conduct of periodic (annual or less frequent) financial audits and reviews. As noted in response to Recommendation 2(b), the County will evaluate if a general Agreement provision relating to accounting system and audit, similar to language in Contract general terms and conditions under Chapter 11B, should be added to AP 2-4. The County will also work to incorporate, where applicable, requirements for an independent certification of the accounting systems, such as those available under AICPA standards, for an entity to which the County is considering outsourcing the accounting of significant County funds. In cases where such a certification is not practical, alternative requirements such as reference checks, submission of other related audit reports, and performance of periodic audits will be incorporated.

Recommendation 2(d): *Ongoing Budget Execution Reviews* - County Management should ensure that:

- its analysts have the full and accurate information and the tools necessary to independently and continually monitor and compare actual expenditures to appropriated amounts to ensure that progress in programs is proceeding as intended,
- program surpluses or shortages are timely identified, and not allowed to accumulate unless approved by management and publicly reported,
- accounting controls are in place to ensure that any significant program expenditure variances can be apparent to budget analysts in both the Executive and Legislative branches, and
- Department Directors are required to document and report on significant program expenditure variances, as well as their effect on their programs, which are subject to judicious analysis.

CAO Response: Existing budget monitoring reports developed and produced by or on behalf of the Office of Management and Budget (OMB) provide departments and analysts with revenue and expenditure data from the County's financial systems for both appropriated/budgeted amounts and actual financial activity. Departmental users of the County's financial systems also have access to a variety of Business Intelligence (BI) financial and budget reports and online queries as needed. Currently, OMB analysts do monitor expenditures vs. appropriations during the annual budget review process of such entities. As an example, OMB identified a significant fund balance in one such program during the FY 2019 budget formulation process. The Executive recommended that part of that large fund balance be used to help fund the entity's FY 2019 request. Programs funded as Non-Department Accounts (NDAs) are not currently required to provide the same quarterly budget information required of departments. The County will expand to relevant NDA's managed by departments the same quarterly budget analysis scrutiny required of departmental budgets.

Recommendation 2(e): Because the elements of control listed below were missing or not evident at the time the questionable payments were processed, management should ensure that each element is addressed in a corrective action plan.

i. Enforce Evidence of Receipt: The payment system should ensure that evidence of receipt of goods or services is provided prior to approving any payment. Evidence

Edward L. Blansitt, Inspector General
November 29, 2018
Page 7

should be provided that the purchase was authorized (e.g., via purchase requisition and matching purchase authorization) and received (e.g., receiving report).

ii. Unique identifier: Management should ensure that all contracts, MOUs, loans and mortgages, or other known recurring payments that cover multiple months and/or accounting periods (such as fiscal years) are recorded with a unique identifier in the accounting system. No payment should be allowed without reference to that unique identifier.

iii. Amounts established in the budget at the outset of each fiscal year for each unique identifier should be assigned a "funds control" such as an encumbrance and authorized payments per cycle (e.g., one payment per month). This is done both to ensure that the budgets are not over expended, and to ensure that the amount set aside for each expenditure is properly expended on the item for which the funding has been appropriated or otherwise intended. This process also guards against duplication of payments for any item since an inadvertent approval of a payment that exceeds funding available for the instrument should cause the payment item to be reviewed and confirmed prior to check issuance.

CAO Response: [Note: We have added numbering above for clarification.] Existing policies already require for Contracts issued under Chapter 11B that authorization for a procurement be evidenced by a Purchase Order (PO), and that receipt of goods or services against the PO be entered into the financial system. The revised policies referenced above (i.e., Finance *Accounts Payable Policies: Financial Governing Principles and Standards* (August 2017) and *Accounts Payable Section Policies: Authorized Payment* (effective April 2018) address items i and ii above. Similarly, for purchases exempt from or not subject to Chapter 11B, the updated policies require authorization for the purchase to be evidenced by a Direct Purchase Order, and receipt of the goods or services to be entered to the system. The updated policies also require that Using Departments approve invoices for payment after determining that goods or services were provided as required under the Contract; and further require that Using Departments submit relevant supporting documents to Finance along with the approved invoice as a requirement for payment of the invoice. All Contracts awarded pursuant to Chapter 11B and, pursuant to AP 2-4, all Agreements exempt from or not subject to Chapter 11B have a unique identifier assigned to them that allow the "matching" of the invoice submitted by the Using Department to Accounts Payable for payment with the relevant Contract/Agreement number.

In addition, and with respect to item iii, for each Contract awarded by Procurement under Chapter 11B, and each Agreement executed under AP 2-4, a Purchase Order or Direct Purchase Order, respectively, is required to be established in the system with a specific encumbrance amount authorized and approved by the Using Department. The Purchase Order or Direct Purchase Order number is matched against the invoice submitted by the Using Department to Accounts Payable for payment.

With respect to our development of a corrective action plan and tracking of the status of actions required to fully address recommendations, we have a robust tracking process for all recommendations contained in reports issued by Internal Audit, the Inspector General, and the

Edward L. Blansitt, Inspector General
November 29, 2018
Page 8

Office of Legislative Oversight. Recommendations contained in the final report will be included in and tracked to completion through this process.

Inspector General Finding 3: In implementing the BioScience Initiative, DED management used public entities to fund the development and operations of a BioHealth intermediary without executing a formal MOU or Contract.

Recommendation 3(a): The County government should ensure that management safeguards and controls are not circumvented, and that effective remedial actions are taken and appropriate sanctions are applied when violations are identified.

CAO Response: The comprehensive set of enhancements to County processes (including training of management, increased requirements for segregation of duties within departments, enhanced financial controls to improve enforcement, the establishment of a new compliance unit to enforce requirements associated with purchases exempt from or not subject to Chapter 11B including related Direct Purchase Orders and to enhance and increase the performance of post-payment audits) are designed to strengthen existing management safeguards and controls: both to ensure compliance with management controls and requirements and, if non-compliance occurs, to detect such occurrence to enable management to take appropriate remedial action.

Recommendation 3(b): For all County-funded economic development programs, the County should clearly identify quantifiable and measurable outputs and outcomes, the successful completion of which should demonstrate specific economic benefit.

CAO Response: As part of the County's budget formulation process, each department is required to analyze the programs for which it is responsible to assess results (benefits) achieved, funding requirements, and opportunities for efficiencies. For non-department account programs, such as those that are the responsibility of the private non-profit Montgomery County Economic Development Corporation, a comparable review process takes place. In addition, CountyStat, working in coordination with departments, has developed a program of performance metrics designed to provide quantifiable and measurable outputs/outcomes to allow for the evaluation of program (and department) performance. We will continue to assess opportunities to strengthen these review processes, including improving current performance metrics that address this recommendation.

Recommendation 3(c): For the programs addressed in this review, County Management should conduct an analysis of the programs that determine the relative economic benefit to the County compared to the cost of each program.

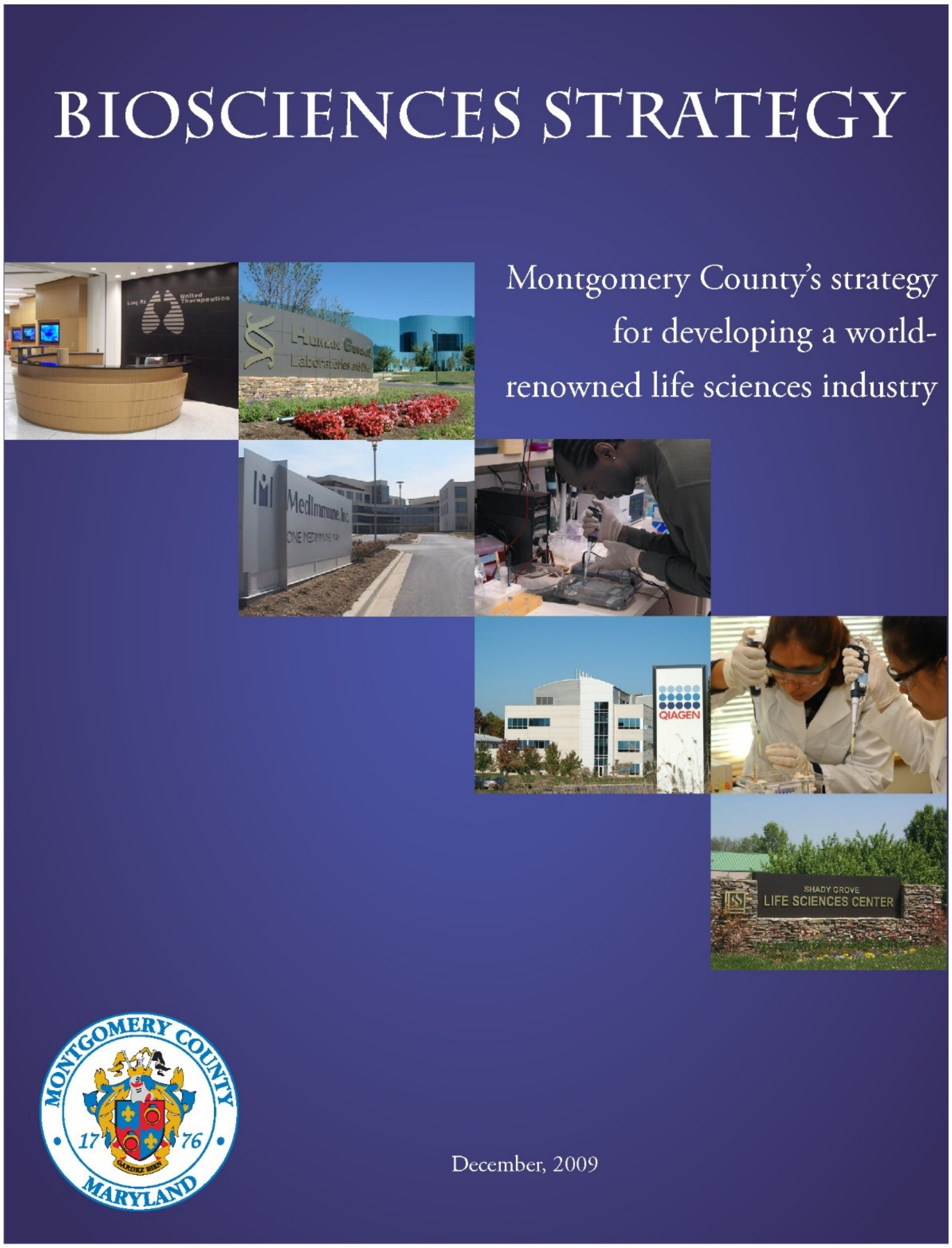
CAO Response: As noted above, the County, as part of its budget formulation process, analyzes each program included in the County Executive's budget request to the County Council. This process requires that each responsible department analyze the programs for which it is responsible to assess results (benefits) achieved, funding requirements, and opportunities for

Edward L. Blansitt, Inspector General
November 29, 2018
Page 9

efficiencies. For non-department account programs, such as those that are the responsibility of the private non-profit Montgomery County Economic Development Corporation, a comparable review process takes place. We will continue to assess the need for improvements in this review process for the programs that were the subject of the Inspector General's review.

cc: Fariba Kassiri, Assistant Chief Administrative Officer
Alex Espinosa, Director, Department of Finance
Marc Hansen, County Attorney

Appendix B: Bioscience Task Force 2009 Report



Introduction

The life sciences are a key component of Montgomery County's economy. In 2008, the County's biosciences industry generated combined revenues of $2.36 billion[1]. It directly employed more than 9,200[2] workers in the private sector and an estimated 49,000[3] in federal government agencies. The average private sector biotech salary was $92,945 - double the County-wide average.

In the 1980s and 1990s, the County government made strategic investments to attract and grow this life sciences cluster, including the donation of land and buildings to help the University System of Maryland (USM) and Johns Hopkins University (JHU) establish an academic presence in Montgomery County. County leaders recognized the quality of life dividend and multiple benefits these investments would bring to Montgomery County: well-paying jobs; an increased tax base[4] to bolster the County's nationally regarded public services, education system and infrastructure; and enhanced health care for County residents.

Maryland Governor Martin O'Malley has made the growth of the state's biosciences sector a top priority for his administration. The recently released Life Sciences Advisory Board's *BioMaryland 2020* strategic plan lays out a series of priority strategies and actions for the state to realize its vision of making Maryland a nationally and globally recognized leader in the biosciences.

Montgomery County is the epicenter of Maryland's bioscience industry and will be a critical partner in achieving *BioMaryland 2020*'s ambitious objectives. This is demonstrated by the decision to locate one of two branches of the new Maryland Biotechnology Center here. The County is home to over 250 of the state's 380 plus bioscience companies, and key federal research and regulatory institutions including the National Institutes of Health, the Food and Drug Administration, the National Institute of Standards and Technology and the Walter Reed Army Institute for Research. As noted above, Montgomery County also hosts satellite campuses of top academic research institutions JHU and the USM (including its Center for Advanced Research in Biotechnology), as well as Montgomery College, a nationally renowned community college.

Yet while Montgomery County is the region's undisputed biotech leader, it is not growing at a rate commensurate with its inherent potential. The County faces unprecedented competition as other U.S. regions and countries around the world invest hundreds of millions of dollars to cultivate their biosciences sectors. The current global biotechnology market is estimated to be $106 billion[5] with an annual growth rate of 25 percent; by 2015 it will have more than doubled in size[6]. To remain competitive in this global environment, Montgomery County needs to advance its own agenda to become an internationally recognized center for translational research and commercialization in the biosciences, and must play a significant role in the implementation of the *BioMaryland 2020* strategy.

[1] Maryland-National Capital Park and Planning Commission (M-NCPPC)
[2] Ibid
[3] Ibid
[4] The Milken Institute report *The Greater Philadelphia Life Sciences Cluster 2009: An Economic and Comparative Assessment* estimates that the Philadelphia region's multiplier impact is 2.6 – each $1 of income directly attributable to a life science company generates an additional $1.6 in income in other sectors.
[5] Steven Burrill, BIO 2008 Presentation
[6] Business Insights: The Biotechnology Market Outlook, Gayle Hamilton

To that end, in the fall of 2008, County Executive Leggett established a Biosciences Task Force to help develop a strategy that will enable Montgomery County to more effectively leverage its rich asset base and become a global hub for life science research, development and technology commercialization. Over the past year the task force, comprised of local biotech executives and state, federal and academic leaders, has met six times to identify the strengths and weaknesses of Montgomery County's biosciences sector, articulate a vision for its future and craft priority strategies. Key objectives, strategies and proposed actions, summarized in the following sections, will enable the County to realize its vision and ensure a high quality of life for all County residents.

Strategic Vision

Montgomery County will enhance its position as a globally recognized leader in advancing bioscience research and development, and in translating scientific discoveries into commercially available products that benefit human health.

The County's Department of Economic Development (DED) plays an important role in supporting the biosciences sector by providing strategic planning and financial assistance to start-up companies to help foster and sustain their growth. Department staff work with bioscience companies of all sizes to support their information, networking, space and related needs. In addition, DED pro-actively fosters relationships with federal agencies, industry groups, venture capital firms and other life sciences stakeholders, and supports a range of professional and networking opportunities to bring these groups together.

The department will play a leading role in coordinating the implementation of the strategies laid out below, working in close partnership with a new Montgomery County Bioscience Leadership Group (see page 10 for additional information).

Key Opportunities and Challenges

The task force identified a number of opportunities and challenges facing Montgomery County's biosciences industry:

Significant federal presence, but a risk-averse culture and lack of entrepreneurialism: The major presence of federal research labs, the National Institutes of Health and the Food and Drug Administration is one of Montgomery County's strongest assets. However, the resulting strong imbalance between private sector and federal bioscience jobs (9,200 private sector workers vs. an estimated 49,000 in federal government agencies) is a double-edged sword that has fostered a more risk-averse and regulatory-oriented culture than in entrepreneurial, university-oriented bioscience hubs like California and the Boston area. Montgomery County can learn lessons from these and other competitive regions about cultivating an environment that better attracts and supports serial entrepreneurs, strong management teams and venture capital, and that rewards risk takers.

Montgomery County has been a pioneer in the creation of business incubators to foster the development and success of early-stage bioscience and high tech companies. Today, the County's Business Innovation Network is comprised of five facilities that currently house 140 businesses (as well as 21 'virtual' tenants), including 38 biotech companies. The Network has graduated over 95 companies that have an estimated workforce of 1,600 at an average salary of $75,000.

To further spur the creation and growth of innovative bioscience companies, biotech hubs in other regions are augmenting their support networks through public-private 'innovation intermediaries.' These intermediaries bring together the financial resources of VC investors with experienced management teams to pluck pioneering research from universities and other research institutions and accelerate the creation of bioscience companies based on these technologies. What differentiates this 'accelerator' model from traditional business incubators is the combination of promising science, committed private sector capital and seasoned management teams collaborating to cultivate entrepreneurialism and accelerate the commercialization of new technologies.

Translational research, technology transfer and commercialization: A recent study of ten life science clusters around the U.S.[7] identified technology transfer and commercialization as common challenges. Montgomery County is home to the National Institutes of Health, the National Institute of Standards and Technology and a number of other federal labs, and branches of the USM and JHU, which receives more federal research dollars than any other university in the U.S. While all of these institutions are engaged in groundbreaking scientific research, they conduct relatively little translational research, and there are a number of barriers to effective industry-university and industry-NIH technology transfer and commercialization. NIH's conflict of interest rules, in particular, have placed tight restrictions on scientific collaboration with the private sector, and have greatly reduced the flow of technology out of NIH in recent years.

[7] *Organizing for Economic Development: Lessons from Leading Life Sciences Regions, July 2007* – prepared for Detroit Renaissance by BDA/Center for Regional Competitiveness

Compounding this, licensing university technologies is viewed by some companies as a challenging and lengthy process, and practices vary from institution to institution. Greater transparency and mutual understanding between businesses and tech transfer offices of their respective needs and expectations is required to facilitate the process. Technology licensing works best when there are both entrepreneurs who can identify promising technologies and internal and external brokers with a business background to facilitate the dialogue with federal and university tech transfer offices about licensing agreements.

Improving the technology transfer process and focusing on the commercialization of promising research must be top priorities to grow Montgomery County's biosciences sector and make it more globally competitive. Strong leadership is needed to break down silos and build more effective partnerships between universities, industry and government agencies to expedite the commercialization of innovative technologies. The UMBI Patent Review Board, UMB-JHU Alliance and Partnership Intermediary Agreements with the U.S. Department of Agriculture's Agricultural Research Services Division offer promising models for further development.

Creating a more robust university research presence in Montgomery County must also be a priority. USM's reorganization of the UMBI Center for Advanced Research in Biotechnology (CARB) at Shady Grove will bring the scientific expertise and technology transfer operations of the University of Maryland College Park and the University of Maryland Baltimore Schools of Medicine and Pharmacy into Montgomery County. It will result in a bigger faculty presence, greater research productivity, a larger numbers of graduate and postdoctoral students and expanded partnerships with federal agencies and industry.

To accelerate the commercialization of promising scientific research, it is critical that hospital and university leaders view clinical trials, translational research and tech transfer as part of their core mission. JHU's recent purchase of Suburban Hospital in Bethesda will establish a stronger research presence of its School of Medicine within Montgomery County. Both USM and JHU have indicated their plans to promote and expand clinical trials activities in Montgomery County and work closely and strategically with the county in support of greater research and development in the biosciences. USM recently established a $3.5 million, federally funded "Proof of Concept Alliance," focused on Department of Defense technologies. Consideration should be given to using this model, working with NIH, FDA, USM and the Maryland Congressional delegation to support life sciences technology transfer in the County and region.

Access to capital: Greater capital is needed at all phases of the biotech development spectrum. There is a particular dearth of seed and venture capital funding for early stage companies. VC leaders have observed that "money finds good ideas." However, VC funding has an inherent bias towards later stage technologies that promise greater returns for investors, and most federal and university research conducted in the region is geared towards basic scientific discoveries. Increased funding is also needed for translational research to take ideas from discovery to proof of concept and to prepare promising technologies for VC funding.

Talent and enhanced workforce capacity: Montgomery County has one of the highest per capita numbers of PhDs in the country. However, the Task Force identified a deficit of managerial/executive talent and seasoned serial entrepreneurs as key impediments to the County's biotech competitiveness. This correlates to the region's relative dearth of investor capital: VC funding often brings entrepreneurial and managerial talent with it. Because of the highly specialized knowledge involved, there is also a need for greater training and recruitment to ensure a robust pipeline of biosciences workers at all levels of the skill continuum.

Regulatory environment: Since 2005, NIH Conflict of Interest rules have prohibited NIH scientists from engaging in outside consulting with biotech and pharma companies, creating a chilling effect on public-private collaboration. The rules have fostered a culture in which NIH scientists are less commercially oriented and their research is less commercially ready, so relatively little NIH research gets translated into products that improve public health. The lengthy - and extremely costly - FDA drug review and approval process also serves as a major barrier to entry into the biosciences arena.

Maryland is perceived of as less business friendly than some of its competitors with regard to tax rates, financial incentives and the cost and ease of doing business. Forbes Magazine's 2009 state rankings placed it at No. 12 overall as a place to do business (Virginia was No.1 for the fourth year running) - but No. 42 for business costs. The *BioMaryland 2020* strategy acknowledges some of these challenges, and offers a number of recommendations for addressing them. At the County level, the Planning Department's development review and Department of Permitting processes are viewed as lengthy and difficult to navigate.

Public policies at the local, state and federal levels must facilitate and support the growth of high-tech bioscience businesses, including direct incentives, facility investment, infrastructure investments, enhanced tax credits and more supportive government regulatory processes. A 2007 study of ten U.S. life science clusters[8] found that the co-location of research facilities and technology assets can bring significant benefits in terms of jobs and tax revenues, and a number of regions are pursuing ambitious real estate development projects with universities to facilitate this co-location.

[8] Ibid

Key Objectives and Strategies

The Task Force identified five overarching objectives and a number of priority strategies to achieve the strategic vision articulated on Page 4.

Objective 1: Enhance the environment for entrepreneurship and the creation of new life science companies.

I. Create a public-private partnership to augment the County's nationally recognized Business Innovation Network with an 'accelerator' that brings together the capital resources of leading VCs with top managers, scientists and entrepreneurs to evaluate, finance and manage the development of promising life science start-ups. The Seattle Accelerator[9] and Cleveland BioEnterprise[10] are two potential models.

II. Court VC firms that have investments in Montgomery County-based biotech companies to open satellite offices in the County.

III. Create incentives to recruit serial entrepreneurs, technical experts and seasoned management professionals from other regions.

IV. Support local venture capital firms' Entrepreneur in Residence programs[11].

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[9] The Accelerator Corporation is a vehicle for investment in and management of emerging biotechnology opportunities. Located in Seattle, it brings together the resources of top-tiered investors, dedicated management and a world-class research institute to identify, evaluate, capitalize and manage emerging biotechnology companies. Collectively, they bring extensive experience to the complex and costly process of transforming laboratory discoveries into commercial products. By providing their expertise to companies in the Accelerator portfolio, these industry leaders provide criticalknowledge and resources that can help to streamline the development and accelerate the commercialization of novel technologies. The Accelerator has access to exciting new technologies and commercial opportunities developed at leading research institutions, universities and biotechnology companies around the world, enabling it to select only the most compelling investments from a deep pool of promising opportunities (source: http://www.acceleratorcorp.com/).

[10] BioEnterprise is a business formation, recruitment and acceleration initiative designed to grow health care companies and commercialize bioscience technologies. Its founders and partners are Cleveland Clinic, University Hospitals, Case Western Reserve University, Summa Health System and the BioInnovation Institute in Akron. The initiative comprises the collective activities of BioEnterprise and its partners' commercialization offices. Companies include emerging medical device, biotechnology, and health care services firms. Each year, the BioEnterprise groups choose a select number of companies to focus on, and the resources and networks of its partners are directed to help them achieve greater levels of business success. BioEnterprise provides companies with experienced bioscience management guidance; relationships with world-class research and clinical institutions; access to bioscience venture capital and private equity firms as well as knowledge of grant funding opportunities; business development and alliance support for strategic partnerships; a network of regional business capabilities including technical services, equipment and professional service providers; and flexible development space (source: http://www.bioenterprise.com/).

[11] The EIR model is used by VC funds to bring on board entrepreneurs for a period of one-two years. During this time, the entrepreneurs evaluate potential deals for the VC and look for a company to start or invest in, which they would run as CEO. NEA currently has an informal program in place.

Objective 2: Catalyze greater technology transfer and commercialization and leverage Montgomery County's federal and academic assets more effectively.

I. Identify viable strategies to address NIH's conflict of interest regulations and to foster greater technology transfer and commercialization of NIH research.

II. Work with USM, JHU and other regional academic research institutions to facilitate greater licensing and commercialization of their research discoveries and technologies.

Objective 3: Foster a more enabling financial, regulatory and business environment.

I. Pass County enabling legislation to create a Montgomery-County specific biotech investment tax credit by summer 2010.

II. Work with MdBio/Tech Council of Maryland (TCM), Montgomery County's state delegation and the state legislative biotechnology caucus to reintroduce legislation that would allow early-stage Maryland bioscience companies to take tax deductions against net operating losses

III. Work with DBED, MdBio/TCM, Montgomery County's state delegation and the state legislative biotechnology caucus to make the state's existing R&D tax credit permanent[12] as well as refundable or transferable, which helps early stage companies that do not yet have taxable profits.

IV. Develop the legal infrastructure for Montgomery County to take an equity investment interest in bioscience companies that receive County funds.

V. Create an expedited review and approval process for qualified bioscience projects and equalize permitting costs with other types of commercial development. Work with the Planning Department and community stakeholders on land use issues, in particular sector plan and zoning code updates, to ensure optimal use of land for the life sciences.

VI. Pro-actively pursue public funds (local, state, federal) for the facilities, equipment and related infrastructure necessary to support science and technology development.

VII. Facilitate access to capital and strategic alliances. Identify and pre-screen investors interested in specific research areas, facilitate guided introductions, co-sponsor networking opportunities and increase support for mechanisms to connect entrepreneurs with VC and partnering opportunities.

VIII. Engage local biotech executives as ambassadors to cultivate relationships with large pharma, VCs and international biotech companies. Market Montgomery County to these companies as a place to do business, and promote partnering, investment and acquisition opportunities with County bioscience companies.

IX. Evaluate the full spectrum of creative financing vehicles that have been successfully implemented in other jurisdictions around the country that could be replicated in Montgomery County.

[12] The program is currently slated to sunset in June 2012.

Objective 4: Enhance bioscience educational opportunities in Montgomery County and expand the higher education presence in Montgomery County to build a robust biosciences workforce and foster commercialization.

I. Support partnerships between Montgomery College, other higher education institutions, industry and Montgomery County Public Schools to support STEM (science, technology, engineering and math) curriculum development, enhance STEM teacher preparation and expand "laboratory" programs designed to spark student interest in and preparation for health science and bioscience careers.

II. Support efforts by USM, JHU and other academic and privately funded research institutions to expand their research presence, clinical trials and technology transfer activity in Montgomery County in order to facilitate greater drug discovery, licensing of applied technologies and business growth.

III. Work with state, academic and private sector partners to seek increased federal/state funding for Montgomery County's workforce programs, and strengthen education and workforce training opportunities in biomanufacturing, clinical research, biotechnology and related skills through partnerships between Montgomery College, federal laboratories, MdBio/MdBio Foundation[23] and other industry based organizations.

Objective 5: Market Montgomery County's bioscience sector nationally and internationally.

I. Create a recognizable brand that differentiates the Montgomery County bioscience sector nationally and internationally.

II. Partner with the Maryland Biotechnology Center to develop a high-profile marketing effort that complements the state's BioMaryland branding and global marketing campaign.

III. Strategically target international biotech companies that are poised for U.S. market entry.

[23] The MdBio Foundation trains high school students in its mobile lab, makes scholarship grants and participates in a number of other educational initiatives in the biotech arena.

Action Plan:

The County's Department of Economic Development (DED) will lead the development of annual work plans and guide the implementation of the strategy. A new, private sector led Biosciences Leadership Group will monitor strategy outcomes and provide the County with ongoing guidance on industry needs and opportunities. The formation of this high-profile group and the definition of its roles and responsibilities will be a critical first action initiated by DED.

Strategy: Establish a Montgomery County Biosciences Leadership Group of private and public industry leaders to monitor progress in strategy implementation and results and to provide guidance on changing biotech needs and opportunities. Designate one or more DED staff as the department's bioscience business development specialist(s).

Actions:

- Develop a short list of proposed senior leaders from private biotech industry, academic research institutions, industry organizations, key federal agencies, state and County government and send out invitation letters.
- Convene an introductory meeting to lay out expectations and goals for the leadership group.
- Select one or more DED staff as the department's bioscience business development specialist(s); notify County biotech companies and partner organizations.
- Develop annual strategy implementation work plans/benchmarks for review and input by the leadership group.
- Hold regular meetings of the leadership group to review progress in achieving annual benchmarks and longer term objectives, and to provide expert input on industry trends, changing needs, etc.
- Partner with MdBio, the Maryland Biotechnology Center and other stakeholders to convene periodic industry focus groups to identify the special needs of key biosciences sub-sectors.

Suggested Timeline: Short-term – ongoing

Objective 1: Enhance the environment for entrepreneurship and the creation of new life science companies.

Strategy: Create a public-private partnership to augment the County's nationally recognized Business Innovation Network with an 'accelerator' that brings together the capital resources of leading VCs with top managers, scientists and entrepreneurs to evaluate, finance and manage the development of promising life science start-ups.

Actions:

- Research public-private models and governance structures that have been used successfully in other jurisdictions to help identify an appropriate model for Montgomery County.
- Work with select partners in the real estate, biotech and VC communities to identify the necessary capital and human resources needed to bring the accelerator concept to Montgomery County, and determine how County government can most effectively support a private sector-led initiative to establish an accelerator.
- Explore linking accelerator resources with JHU and USM research and technology transfer capabilities, USM at CARB in Shady Grove and USM entrepreneurship networks.

- Utilize the new accelerator as a vehicle to proactively engage with industry to identify commercialization opportunities from their research, and to transfer technologies out of public and private research institutions in other regions.
- Develop metrics to assess the accelerator's performance (e.g., how many accelerator companies become revenue generating businesses, are acquired, etc.).

Suggested Timeline: Short – medium term

Strategy: Court VC firms that have investments in Montgomery County-based biotech companies to open satellite offices in the County.

Actions:

- Research which VCs that invest in biotech have equity in Montgomery County based companies, using sources including the Maryland Biotechnology Center's databases and local VC contacts.
- Meet with local companies and ask for their help in making introductions to their VC investors.
- Approach the Mid-Atlantic Venture Association to seek assistance with introductions to its members.
- Develop an incentive package and marketing piece to attract VCs to Montgomery County – e.g., free/reduced cost space in County's Business Innovation Network.
- Arrange meetings with targeted VCs.

Suggested Timeline: Ongoing

Strategy: Create incentives to recruit serial entrepreneurs, technical experts and seasoned management professionals from other regions.

Actions:

- In partnership with biotech companies, VCs and other bioscience stakeholders, develop a short list of key positions/job descriptions where there is an identified deficit of talent.
- Meet with financial institutions and other businesses that have a stake in the County's biotech sector to gauge their interest in participating in an initiative to attract talent.
- Evaluate the fiscal impact to the County of potential financial and/or other incentives that could be used as tools to attract proven talent.
- Enhance partnerships with the USM and JHU business schools, which offer bio-business skills for doctors and research scientists.

Suggested Timeline: Short – medium term

Strategy: Support local VC firms' Entrepreneur in Residence programs.

Actions:

- Meet with leaders from local VC firms to discuss mechanisms through which the County can support existing informal Entrepreneur in Residence programs and help launch new ones.
- Based on the outcome of this dialogue, take appropriate follow-up actions.
- Research entrepreneurial programs (private sector and academic) in other regions to identify best practices in fostering greater entrepreneurship in the biosciences.

Suggested Timeline: Short – medium term

Objective 2: Catalyze greater technology transfer and commercialization and leverage Montgomery County's federal and academic assets more effectively.

Strategy: Identify viable strategies to address NIH's conflict of interest regulations and to foster greater technology transfer and commercialization of NIH research**.**

Actions:

- Continue to cultivate relationships with the NIH Public-Private Partnership Program (http://ppp.od.nih.gov/) and the Office of Technology Transfer (http://ott.od.nih.gov/). The Public-Private Partnerships Program was created in 2005 to develop collaborative research programs with the private sector within existing NIH rules and regulations, and can help foster new partnerships between NIH and Montgomery County bioscience companies.
- Team with other organizations (TEDCO, etc.) to raise awareness about the NIH Public-Private Partnership Program and NIH Foundation, as well as new initiatives within the NIH Office of Technology Transfer that could benefit the local bioscience community.
- Work with Maryland's congressional delegation to advocate that the NIH Public-Private Partnership Program is funded at a level to allow robust technology commercialization and facilitate partnerships in the region.
- Look to best practices at other federal laboratories (e.g., Sandia National Laboratory) as potential models for fostering greater public-private collaboration and tech transfer with NIH, NIST, etc.
- Work with the state of Maryland's new Federal Facilities Advisory Board to advocate that the role of NIH in local technology commercialization be one of the first topics the group addresses.
- Evaluate the feasibility of NIH replicating the CDC-Georgia Research Alliance program, which focuses on enhancing technology transfer and creating mechanisms that enable CDC researchers to engage with start-up companies.

14

- Create a Congressionally-chartered technology commercialization federal lab foundation. The foundation would help transfer internal research and development from federal labs to the private sector more effectively, and serve as a tool that laboratories could use to facilitate business and partnership transactions consistent with federal statutes [14].
- Actively participate in the spring 2010 National Academy of Sciences symposium, which will bring together federal, state and local leaders, private sector executives and academics to discuss how the U.S. can move the biosciences industry forward, using Montgomery County as a case study.

Suggested Timeline: Short medium term

Strategy: Work with USM, JHU and other regional academic research institutions and private industry to facilitate greater licensing and commercialization of their research discoveries and technologies.

Actions:
- Facilitate USM efforts to expand the Center for Advanced Research in Biotechnology (CARB) at its Shady Grove campus through strong ties with the University of Maryland College Park and University of Maryland Schools of Medicine and Pharmacy.
- Work with JHU on development plans for its Belward campus in Gaithersburg West and its recent purchase of Suburban Hospital in Bethesda in order to foster expanded research and clinical trials in Montgomery County.
- Support efforts by USM and JHU and other academic and privately funded research institutions to expand their research presence, clinical trials and technology transfer activity in Montgomery County in order to facilitate greater drug discovery, licensing of applied technologies and business growth and identify specific actions to strengthen USM and JHU's partnerships with the County.
- Encourage the leadership of JHU and USM to evaluate other university technology transfer models and adopt best practices from those deemed most effective and efficient in licensing their technologies.
- Support *BioMaryland 2020*'s recommendation for a comprehensive review of internal and extramural policies and procedures that affect university private-sector collaboration for the development and commercialization of USM research discoveries.
- Encourage USM and JHU to incentivize faculty to perform applied research and engage in entrepreneurial activities through recognition and incentives for translational research and commercialization efforts, and conferring credit for patents, licenses and industry collaboration.

[14] The Foundation's charter could allow for the assignment of federal researchers to work with private sector companies as part of their official duties in an open, managed, transparent process modeled on best practices from universities, non profit research institutes and private sector managed federal laboratories. The charter could also include a policy that allows federal researchers to take entrepreneurial leave to be involved in new bioscience start-ups to commercialize federal research discoveries. The foundation would be based on the federal government's land grant extension model, originally developed for public land grant universities, but extended to federal laboratories.

- Advocate in support of the *BioMaryland 2020*'s recommendations for: 1) increased funding for TEDCO for technology transfer and proof-of-concept development projects; and 2) greater funding for the USM technology transfer office to recruit scientifically/commercially skilled technology transfer personnel and fund patent expenses and monitoring.
- Develop seed funding mechanisms for additional proof of concepts work by County companies for promising technologies from university research. The Philadelphia Science Center's new QED Proof-of-Concept program offers one model[15].
- Partner with other public/private bioscience stakeholders to hold an annual one-two day meeting for tech transfer offices from around the country to present technologies available for licensing to VC and other investors.

Suggested Timeline: Short – medium term

Lessons from Ohio

- The Cleveland Clinic is a renowned not-for-profit academic medical center that integrates clinical and hospital care with research and education. Lab research is conducted through its Lerner Research Institute. The Cleveland Clinic Foundation Innovations is its technology commercialization arm, with a mission to 'benefit the sick through the broad and rapid deployment of CC technology.' The foundation facilitates innovation, creates spin-off companies, licenses technologies, secures resources and establishes strategic collaborations with corporate partners. This focus on tech transfer is fairly unique among major research hospitals.
- Case Western Reserve University has 'empowered' its tech transfer office and created Case Technology Ventures as its pre-seed stage VC fund for technologies coming out of the university.
- University Hospitals, a community based health care system serving northern Ohio, has a Center for Clinical Research focused on translational research. The Center combines federally funded research, sponsored research agreements with pharma, biotech and medical device industries and a partnership with Case Western Reserve University.

Source: Organizing for Economic Development: Lessons from Leading Life Sciences Regions, July 2007.

[15] Philadelphia's University Science Center's QED Proof-of-Concept Program is intended to help bridge the gap between research grants and private seed investment. It will provide funding to help entrepreneurs, university researchers, and innovators to validate the scientific and commercial value of their projects, and enhance their investment attractiveness to established life science companies and private investors. QED was launched in the spring of 2009 as an 18-month pilot to demonstrate its value and feasibility as an independent, multi-institutional, scalable, and economically sustainable proof-of-concept program.

Objective 3: Foster a more enabling financial, regulatory and business environment.

Strategy: Pass County enabling legislation to create a Montgomery-County specific biotech investment tax credit by summer 2010.

Actions:
- Work with the County Department of Finance, Office of Management and Budget and Office of the County Attorney to craft and introduce County legislation.
- Once County legislation has been enacted, coordinate with the Office of Management and Budget and the Department of Finance to include funding for the tax credit in the County's next fiscal year budget, and to develop the necessary administrative procedures.
- Consider reserving half of the tax credits for university start ups to attract more university based research and entrepreneurial resources to the County[5].

Suggested Timeline: Short – medium term

Strategy: Work with MdBio/TCM, the County's state delegation and legislative biotechnology caucus to reintroduce legislation that would allow early-stage Maryland bioscience companies to take tax deductions against net operating losses.

Actions:
- Meet with MdBio/TCM representatives and members of the state legislative biotechnology caucus to discuss previously introduced NOI legislation and develop an advocacy strategy for its successful passage.
- Review and revise, as necessary, the previous NOI bill and identify sponsors to introduce the bill in the 2010 session.
- In coordination with MdBio/TCM and members of the Montgomery County bioscience community, pro-actively lobby for passage of the bill.

Strategy: Work with DBED, MdBio/TCM, Montgomery County's state delegation and the state legislative biotechnology caucus to make the state's existing R&D tax credit permanent as well as refundable or transferable, in order to help early stage companies that do not yet have taxable profits.

Actions:
- Work with DBED and MdBio to make this part of TCM's legislative priorities and to develop an advocacy strategy.

[5] Advocates for the Virginia bioscience industry won a significant victory at the Virginia General Assembly in 2009 with the passage of an "omnibus" bioscience bill. A key feature of the legislation is an investment tax credit targeted at bioscience and other advanced technology companies, especially start-ups from Virginia universities. The legislation limits the existing qualified equity and subordinated debt investment tax credit to bioscience and other advanced technology start-ups, and reserves up to 50 percent of the available credit for tech-transfer spin-outs from universities.

- Meet with members of the state legislative biotechnology caucus to identify sponsors for a bill in the 2010 legislative session to amend the existing state R&D tax credit legislation.
- In coordination with MdBio/TCM and members of the Montgomery County bioscience community, pro-actively lobby for passage of the bill.

Strategy: Develop the legal infrastructure for Montgomery County to take an equity investment interest in County bioscience companies that receive County funds.

Actions:
- Assess the existing legal framework that governs the ability of Maryland political subdivisions to invest in private companies.
- Identify the legislative actions and institutional mechanisms that would enable Montgomery County to benefit financially from investments (in the form of grants and loans) in County bioscience companies.

Strategy: Create an expedited approval process for qualified bioscience projects and equalize permitting costs with other types of commercial development. Work with the Planning Department and community stakeholders on land use issues, in particular sector plan and zoning code updates, to ensure optimal use of land for the life sciences.

Actions:
- Meet with biotech real estate experts and companies that have experience working with the Planning and Permitting Services Departments to identify specific issues/barriers and come up with possible solutions.
- Meet with senior staff from the Planning and Permitting Services Departments to discuss these issues and proposed solutions and to streamline development review and permitting. Introduce an expedited approval process for strategic projects.
- Actively engage in master plan updates (in particular Gaithersburg West and Germantown) to ensure optimal zoning for bioscience/mixed use developments.
- Assign a business development specialist in the Department of Economic Development to shepherd biotech projects over 5,000 square feet through the planning review and permitting processes.
- Continue to exempt biotech projects from impact fees and other County development surcharges.
- Develop an alternate permitting fee structure for bioscience facilities in recognition of their higher construction costs. Currently, permitting fees are based on total project costs, penalizing biotech projects that require costly laboratories, enhanced HVAC systems, etc.

Suggested Timeline: Short – long term

***Strategy*:** Pro-actively pursue public funds (local, state, federal) for the facilities, equipment and related infrastructure necessary to support science and technology development.

Actions:
- Work with the County Office of Intergovernmental Relations to develop annual federal funding requests that prioritize bioscience related facilities, equipment and other infrastructure investments.
- Proactively engage with Montgomery County's federal and state delegations to advocate for increased infrastructure investments that support the growth of the biotech sector.
- Appoint a DED staffer to track federal infrastructure spending on science and technology, identify funding opportunities and coordinate funding applications.

Suggested timeline: Ongoing

Strategy*:* Facilitate access to capital and strategic alliances. Identify and pre-screen investors interested in specific research areas, facilitate guided introductions, cosponsor networking opportunities and increase support for mechanisms to connect entrepreneurs with VC and partnering opportunities.

***Actions*:**
- Use the Maryland Biotechnology Center's databases to ferret out funding and partnering opportunities for County bioscience companies and match County biotech companies with them as appropriate.
- Pro-actively cultivate relationships with seed, angel, venture and other investors in biotech through attendance at targeted investor, financing and other networking events.
- Train DED staff in venture financing methods so that they better understand the needs of companies, how to structure deals and what types of finance are best suited to the needs of biotech companies at different stages in their development.
- Ensure DED staff understands the funding needs of local bioscience companies and can connect them with appropriate funders.
- Have DED staff present information about local biotech companies to financial professionals and potential partners at conferences and events that these companies cannot afford to attend.
- Organize/sponsor business plan assistance and coaching events for entrepreneurs. Organizations such as San Diego Connect's Springboard (https://www.springboardenterprises.org/) can provide support.

Suggested Timeline: Short – long term

Strategy: Engage local biotech executives as ambassadors to cultivate relationships with large pharma, VCs and international biotech companies. Market Montgomery County as a place to do business and promote partnering, investment and acquisition opportunities with County bioscience companies.

Actions:
- In partnership with industry leaders, identify and articulate Montgomery County's industry-specific strengths and weaknesses, and conduct cluster analyses to pinpoint strategic corporate targets that could enhance the quality and quantity of identified clusters.

- Meet with biotech industry leaders from other countries to assess their views on strategic business targets, and request their assistance with introductions to targeted company executives.
- Target international biotech executives at conferences, and arrange meetings when they are visiting the D.C. region.

Suggested Timeline: Ongoing

Objective 4: Enhance bioscience educational opportunities in Montgomery County and expand the higher education presence in Montgomery County to build a robust biosciences workforce and foster commercialization.

Strategy: Support partnerships between County higher education institutions, industry and MCPS to support STEM curriculum development, enhance STEM teacher preparation, as well as "laboratory" programs designed to expand student interest in and preparation for health science and bioscience careers.

Actions:

- Expand the presence of USM and JHU in Montgomery County with additional undergraduate and graduate degree programs in biosciences, bioengineering, computational biology, health and medical sciences and business degree programs specifically designed to support clinical research and industry development in Montgomery County and the broader region.
- Coordinate planning and expansion of higher education assets with the County's Business Innovation Network and state initiatives.
- Support County-sponsored academic scholarships strategically designed to "grow our own" workforce in high demand areas including the sciences, health and technology fields. Initiatives such as the 2+2+2 career pathway programs between Montgomery County Public Schools, Montgomery College and the USM Universities at Shady Grove are exemplary examples.
- Support the enhancement of Montgomery College's curriculum, partnership programs in the life sciences and science teaching facilities and the Science and Technology Park at the Germantown campus, in order to create a deeper base of students prepared for graduate and research opportunities at the university level.

Suggested Timeline: Ongoing

Strategy: Work with state, academic and private sector partners to seek increased federal/state funding for Montgomery County's workforce programs, and strengthen education and workforce training opportunities in biomanufacturing, clinical research, biotechnology and related skills through partnerships between Montgomery College, federal laboratories, MdBio/MdBio Foundation and other industry based organizations.

Actions:

- As part of the proposed biosciences leadership group, establish a standing subcommittee on bioscience and engineering education. The subcommittee should include representatives of MCPS, Montgomery College, MdBio/MdBio Foundation, USM and JHU to support education, research and workforce interests.

- Coordinate efforts of all county-sponsored education and training organizations, including the Workforce Investment Board, MCPS-MC Cluster Advisory Boards and the Montgomery County Business Roundtable for Education in support of STEM and biomedical sciences initiatives.

Suggested Timeline: Short long term

Objective 5: Market Montgomery County's biosciences sector nationally and internationally.

Strategy: Partner with the Maryland Biotechnology Center to develop a high-profile marketing effort that complements the state's BioMaryland branding and global marketing campaign.

Actions:
- Create a recognizable brand that differentiates the Montgomery County biosciences sector nationally and internationally.
- Explore opportunities to partner with the Maryland Biotechnology Center on joint marketing and branding efforts.
- Create a matrix that lists key marketing opportunities, trade publications and events and prioritizes them based on expected exposure, networking and cost.
- Attend priority industry events to market Montgomery County and local companies, as resources permit.

Suggested Timeline: Ongoing

Strategy: Strategically target international biotech companies that are poised for U.S. market entry.

Actions:
- Research which countries, and which companies in these countries, are most likely to be attracted to Montgomery County's assets.
- Ensure a strong DED presence at industry events where targeted countries/international companies have a presence, in order to develop relationships with company representatives and educate them about the County's strategic advantages.
- As resources allow, participate in key international industry conferences including BIO Europe, BIO Asia and BIOMED Israel. Use professional local consultants to set up high level meetings with targeted companies in host countries.
- Facilitate introductions and networking opportunities between County biotech companies and targeted international companies.
- Tailor marketing documents to specific international audiences and translate them into targeted languages including Chinese, Korean and Hebrew.
- Survey local biotech companies to ascertain their target international markets, and help connect them to state and other resources that can help achieve their goals.

Suggested Timeline: Ongoing

Montgomery County Biosciences Task Force

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Stewart Edelstein
Universities at Shady Grove

Dennis Fallen
Fisher BioServices

Paul Fischer
GenVec, Inc.

James L. Hughes
University of Maryland, Baltimore

Hercules Pinkney
Montgomery College

Kazem Kazempour
Amarex Clinical Research

Rita Khanna
Aeras Global TB Vaccine Foundation

Jack Khattar
Supernus Pharmaceuticals

Rachel King
Glycomimetics

Scott Koenig
MacroGenics

Steven Linberg
Chiesi Pharmaceuticals

Lawrence Mahan
Maryland Biotechnology Center

Steven Mayer
CoGenesys, Incorporated

Jerry Parrott
Human Genome Sciences

Devinder Poonian
DP Clinical

Michael Richman
Amplimmune

Bill Robertson
Adventist Healthcare

Ted Roumel
University of Maryland
Biotechnology Institute

Edward M. Rudnic
UnionBridge

Robert Scheer
Scheer Partners, Inc.

Amita Shukla
New Enterprise Associates

Rahul Singhvi
Novavax

Rick Soni
Rex Ahn

Roger Williams
U. S. Pharmacopeia

Richard Zakour
MdBio/MdBioFoundation

Montgomery County

Joyce Fuhrmann
Office of County Councilmember
Mike Knapp

Mike Knapp
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Development

Steve Silverman
Director, Department of Economic
Development

MONTGOMERY COUNTY, MARYLAND

Department of Economic Development
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Appendix C: Councilmember Knapp October 2009 Blog

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STARTING WITH THE SOCKS

A BLOG BY MONTGOMERY COUNTY COUNCILMEMBER MIKE KNAPP

"SUCCESS BEGINS FROM THE GROUND UP. IT NEVER BOTHERED ME TO BE CHIDED OVER MY COMMITMENT TO DOING THE LITTLE THING RIGHT. MAKE SURE THAT YOU AND YOUR TEAM PUT THEIR 'SOCKS' ON IN THE CORRECT MANNER."
-- JOHN WOODEN, *ON LEADERSHIP*

MONDAY, OCTOBER 12, 2009

A Life Sciences and Technology Economic Development Strategy for Montgomery County

Overview

As the nation begins its emergence from the most difficult economic downturn in 70 years, Montgomery County has the potential to lead the coming economic resurgence with a focus on innovation opportunities for the knowledge economy. However, this leadership role will require that we take clear and decisive steps to build upon the technology assets that exist in our County. As in the past, a part of our County's strategy must include appropriate land use designations and incentives. However, we must look further than land use. We must recognize that other jurisdictions have also been successful following our lead in developing strong programs to identify emerging technologies and create new business opportunities. We must do more.

In the mid-1980's Montgomery County made a strategic decision to establish the Shady Grove Life Sciences Center which was the first location in the nation zoned exclusively for life sciences. In the coming weeks, the County Council will begin its review and revisions to the Gaithersburg West Master Plan and the White Flint Master Plan. Simultaneous to this, it is imperative that the County also establish the economic development framework that will not only help make these land-use plans successful, but more importantly, establish the framework for our County's broader economic growth.

There can be many elements to an economic development strategy, but following is an outline of key components to reinvigorate our County's efforts in the life sciences and emerging technology arena. There will be recommendations coming from the County's Life Sciences Task Force sometime later this year. Those recommendations will supplement/complement these concepts to make an even more dynamic economic development strategy.

ABOUT ME

MIKE KNAPP

MONTGOMERY COUNTY, MARYLAND

Councilmember Mike Knapp represents the Upcounty and western areas of Montgomery County, including the communities of Barnesville, Boyds, Clarksburg, Damascus, Germantown, Goshen, Laytonsville, Montgomery Village, Olney, and Poolesville. He presently serves as a member of the Council's Education Committee, and as Chairman of the Planning, Housing & Economic Development Committee.

VIEW MY COMPLETE PROFILE

THE OPEN MIKE NEWSLETTER

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Montgomery County (MD) Government

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▼ 2009 (8)
► December (1)

These 10 elements can establish a pipeline to provide access to new technologies, creating synergies between federal labs and academic research to make these technologies more robust, establish commercial opportunities for these new technologies, provide space and a location for new companies, and enhance a workforce to allow these new companies to grow locally. There are a number of ways to achieve these objectives, but it is vitally important that we establish this strategy in order for the Gaithersburg West Master Plan or any other land use plan focused on economic development to be successful. I look forward to working with my colleagues on the County Council and with the County Executive to achieve economic prosperity for today and generations to come.

Build Upon Existing County Assets

(1) Establish Memoranda of Understanding (MOUs) for partnerships to increase academic research – Montgomery County is unique for counties of its size and wealth in that it is not home to a major academic institution. Fortunately, there are efforts underway within the University System of Maryland at the Universities at Shady Grove to increase academic programs and particularly, academic research. Johns Hopkins University has an emerging academic presence and, as the owner of one of the largest parcels in the Gaithersburg West Master Plan, has the opportunity to increase its world-renowned research in the county. It is critical in the coming months that the County seeks to establish memoranda of understanding that outline how the County and these institutions will partner to establish a long-term plan for academic research growth.

(2) Work to refine federal conflict of interest requirements – One of the most significant aspects for the success of the technology industries in California and Massachusetts is the transfer of technology and ideas from researchers in some of the nation's leading research institutions like MIT, Harvard and Stanford who are funded in part by the federal government. Montgomery County has a number of institutions that rival these fine institutions, yet we don't see the same number of new businesses being formed. Part of the reason for this is the conflict of interest requirements placed upon researchers in federal institutions. Clearly there must be guidelines to ensure that the taxpayers receive the financial benefit of federally-funded research, but we must come up with a better way to ensure that breakthrough technologies are developed commercially and made available to improve the human condition. We must work quickly and diligently with our federal representatives to strike the appropriate balance that allows for this to occur.

(3) Establish strategic partnerships with federal labs – While Montgomery County is home to numerous federal labs including the National Institutes of Health, the Food and Drug Administration (FDA), the National Oceanic and Atmospheric Agency, and the National Institute of Standards and Technology to name a few, there are no broad-based partnerships in place to aid ongoing research activities or for the commercialization of technologies. Other jurisdictions with federal research institutions have established strategic relationships to accomplish similar objectives that benefit local economies and help achieve the research institution's federal mandate and mission.

Implement Economic Development Initiatives

(4) Develop a plan for attracting/allocating life science/technology firms at the county's signature sites (White Oak, Shady Grove, Germantown, Bethesda, Silver Spring) – The County has a number of attractive land use initiatives underway that provide unique opportunities for attracting new technology firms and locating emerging firms. Each of these areas provides different qualities for different types of organizations. For example, the FDA expansion at White Oak provides a location for regulatory affairs organizations, but as the era of personalized medicine becomes more of reality it will be important for many life science firms to be located near the FDA in order to keep up with evolving technologies and regulations. The County must assess the types of opportunities that exist at each of these locations and work with property owners and businesses to establish a process that locates firms in the best locations for their needs.

(5) Establish a technology pipeline with federal labs and county incubators – One of the most significant elements to Montgomery County's success in the life sciences has been the number of federal scientists who wanted to start companies and didn't want to leave the area. As a result, Montgomery County is home to MedImmune, HGS and the JC Venter Institute. Montgomery County has a strong incubator program that can be leveraged in conjunction with the federal labs to provide the space to start the next generation of companies with local scientists. Working in conjunction with our federal institutions we can continue to retain this international expertise residing in our local jurisdictions, as well as find ways to encourage those scientists to turn their research into science the general public can use.

(6) Establish a local biotechnology tax credit – Maryland State

Delegate Brian Feldman of Montgomery County sponsored legislation three years ago that established a statewide biotechnology tax credit that has been an incredibly successful program, resulting in companies waiting in lines overnight to apply. The Council should establish a similar local biotech tax credit in the coming year.

(7) Re-introduce a green tape approval process for qualified technology firms – In the 1980's and 1990's, the County utilized a "green tape" approval process for life science firms in an effort to make the establishment and/or expansion of these firms easier and more user-friendly by expediting County review and permitting processes. Montgomery County should re-initiate this green tape process for firms in the priority technology areas that have already been identified by the Department of Economic Development, including life sciences, information technologies, health care and telecommunications.

Invest in People

(8) Increase access to management talent and provide in-depth support and mentoring from people with experience in starting and growing companies - Having access to exciting new technologies and scientists is not in itself enough to make for a thriving technology economy, It also is vital to have the management expertise that knows how to make technology commercially viable. Through the County's incubator system, we have an opportunity to provide support and mentoring for companies as they are starting out, but we must also recruit successful managers to aid in this process. There are a number of ways to achieve this by using both public and private sector support. We must explore these options and move quickly to put a program in place.

(9) Ensure workforce development – Montgomery County is already among the most educated jurisdictions in the nation with more than 55 percent of our adult population holding bachelor's degrees, and having the highest number of doctoral recipients of any county in the nation. Nevertheless, it is important that we build upon that foundation to ensure our workforce has the skills necessary to work in a knowledge economy. We must enhance programs at Montgomery College, the Universities at Shady Grove and Johns Hopkins to ensure that employers can re-train employees, but more important make sure that our residents have access to programs that will make them eligible for employment in current and emerging technology firms.

(10) Enhance career pathways for Montgomery County students – Montgomery County Public Schools (MCPS) by any measure are among the finest in the nation at making students college-ready. One of our challenges, as well as one of the challenges for our nation, is to make sure that our students understand the career opportunities that are available to them in a knowledge economy. It is important for students to understand the relevance of the courses that they are taking to a series of career pathways. There is already a nascent effort underway within MCPS and Montgomery College, but this needs to be enhanced and made more robust by working with our four-year institutions and the private sector.

POSTED BY MIKE KNAPP AT 6:51 AM
LABELS: WORKFORCE INVESTMENT

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1 COMMENT:

Donna Baron said...

"...establish the framework for our County's broader economic growth."
I hope this means you plan to shift some of the 40,000 jobs now proposed for the "Science City" to other locations throughout the county. This might alleviate some of the overwhelming traffic congestion that will result from the proposed Gaithersburg West Master Plan.

OCTOBER 12, 2009 AT 10:19 AM

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Appendix D: Consultant's Implementation Plan

Monday, August 22, 2011 (v5)

Implementation Plan
for BioHealth Initiatives for Central Maryland Region

This is a one-year implementation plan for a multi-year vision to transform the central Maryland region into a world-class life sciences hub that is second to none in turning the region's unmatched research assets into the best healthcare products and applications to benefit healthcare around the world and economic growth for the region. To that end, a private-sector driven and regionally-based BioHealth intermediary in the form of a 501c3 nonprofit will be established between 2011 and 2012 to facilitate and expedite commercialization of the bioscience research from federal, academic and private entities, and to promote the region as a place to be for all sectors of the BioHealth industry.

BioHealth Industry Definition

The definition of biosciences includes a cluster of related industries including biotechnology, medical devices, healthcare services, e-Health, mobile health, electronic medical records, health informatics, and cyber security.

Mission and Objectives of the Intermediary

Mission: Grow healthcare companies and commercialize bioscience innovations in the central Maryland region through business formation, recruitment, and venture acceleration.

Key objectives:

1. Significantly increase the flow of private and public early stage capital to businesses, entrepreneurs and scientists in the region by leveraging federal, private, university, foundation, and international funding resources to support and grow bioHealth companies.

2. Develop an active talent network of entrepreneurs, investors, and experienced managers and an integrated network of all technical and financial innovation and commercialization resources in the region by connecting the federal labs, university, and industry research and technology transfer offices.

3. Actively facilitate tech transfer and commercialization by identifying candidate BioHealth technologies from public, academic and private sources of research and technologies, underwriting candidate firms to determine market feasibility, managing

1

and growing funded early stage companies, and facilitating marketing and distribution of products and services of early-stage companies to both domestic and global markets.

4. Create global public awareness of the region's world class BioHealth and technology assets through effective branding, marketing, market research and public relations.

5. Ensure an adequate supply of knowledge workers to support regional growth of the BioHealth industry by working with educators and workforce development organizations.

Benchmarks and Measures of Success (5-year Objectives)

1. Double the current venture funding for the region's biotechnology industry from $79.8 million per year to a minimum of $150 million in new investments per year.

2. Source 150 prospective deals per year, while seeking to fund approximately 25% of them, or 35 deals, per year at approximately $4.3 million per start-up (or $150 million total per year).

3. By year five of its operation, the BioHealth Intermediary should generate the following funding activities:

    a. Source 150 prospective deals annually;

    b. Establish banking relationships with:

        i. 100 venture firms with BioHealth focus;

        ii. 20 investment banks with BioHealth focus; and

        iii. 15 commercial and VC debt funding sources.

    c. Obtain funding from 10 government grant funding sources.

4. Annual economic impact and job creation benchmarks:

    a. $ of equity investment dollars leveraged;

    b. # of jobs created or retained;

    c. # Serial entrepreneurs recruited into the region;

    d. # new class "A" corporate managers attracted to the region and grown in the region;

2

   e. # New businesses recruited into the region; and

   f. # New BioHealth technologies developed and commercialized.

5. Goals for the Intermediary:

   a. At least $2.5million operating dollars raised for the Intermediary's operation each year after the initial start up year;

   b. Build a 10-15 member professional and contract staff to include healthcare sector areas, biomedical, biomedical devices, biotechnology, health IT services and investment professionals; and

   c. Leverage existing national and international BioHealth investment and commercialization resources to compliment the new innovation intermediary's team.

90-day Action Plan

Goal #1: Build the foundation for a regionally-oriented and private-sector driven BioHealth intermediary to facilitate and expedite tech transfer and commercialization of basic research in federal labs, universities, and BioHealth companies in the region by achieving the following objectives:

1. Generate an initial commitment of a minimum of $1.5 million per year for first year and $2.5 million for the second and third years to fund the operations of the Intermediary from the following sources:
   a. $500,000 from local government--confirmed from Montgomery County
   b. $500,000 from universities and foundations:
      i. $125K confirmed from Johns Hopkins University
      ii. Confirm University of Maryland System's funding level
      iii. Raise a minimum of $250K from foundations in the Central Maryland region.
   c. $500,000 from private industry
      i. $250K confirmed from Human Genome Sciences
      ii. Confirm MedImmune's funding commitment
      iii. Reach out to other major companies in the region
   d. Cultivate potential state and federal financial partners for future years operating budgets

3

2. Identify interim leadership and staff support:
    a. Identify members of the board and the executive committee ;
    b. Identify interim executive director or president for the Intermediary;
    c. Identify interim staff support and teams; and
    d. Retain a BioHealth innovation intermediary consultant to assist in interim leadership.

3. Establish the organization's operational, legal, financial, physical and virtual presence and structure, including:
    a. Finalize a name for the Intermediary;
    b. Design a logo;
    c. Develop a URL and a web presence;
    d. Apply for and establish 501c3 status through Venable LLC's pro bono services;
    e. Identify initial locations in Montgomery County and another one in the region; and
    f. Establish an initial bank account under the Montgomery County Foundation for the Intermediary to receive operational funding.

Goal #2: Utilize Johns Hopkins' and University of Maryland's resources and expertise to identify and apply for federal grants on behalf of the Intermediary during the first year's operation. Specific activities include:

1. Identify resources from both Hopkins and UM with expertise in grants applications and develop a plan to apply for federal, state and other grants related to the Intermediary's mission;

2. Identify and apply for federal grants that support public-private partnerships or regional collaborations in economic development, technology innovation, workforce development, and advancing healthcare, including:
    a. Department of Commerce's Economic Development Administration (EDA) "Jobs and Innovation Accelerator Challenge" Grants
    b. Small Business Administration's (SBA) "America Competes" Grants for Regional Innovation Clusters, both of which require a regional approach to commercialization of biosciences.
3. Utilize grant writing consultants when University resources are not available or adequate

4

Goal #3: Cultivate relationships with federal and university tech transfer offices.

1. Designate an interim staff liaison for the National Institute of Standards and Technology (NIST) to be an active partner in its launch of the Center for Cybersecurity Excellence and the tech transfer program (both to be established by NIST within one year).

2. Designate interim staff liaisons for both NIH and NCI and connect with their Public-Private Partnership Program and the Offices of Technology Transfer, as well the tech transfer offices of the 27 NIH institutes and centers to source prospective commercialization technologies.

3. Establish relationships with universities' tech transfer offices and identify and assess effectiveness of current practices in commercialization and tech transfer.

Goal #4: Cultivate relationships with the state of Maryland and regional partners to educate on the mission of the BioHealth intermediary and form partnerships if appropriate.

1. State of Maryland government agencies and affiliates--Department of Business and Economic Development, Maryland Biotechnology Task Force and the General Assembly.

2. Higher education institutions—University System of Maryland, Johns Hopkins University, and Montgomery College.

3. Statewide bioscience industry organizations--Maryland Biotechnology Center, Maryland Technology Development Corporation (TEDCO), and Tech Council of Maryland (TCM) and its affiliate MdBio.

4. Economic development agencies and organizations such as the Montgomery County Department of Economic Development (DED), Economic Alliance of Greater Baltimore (EAGB), Greater Baltimore Technology (GBT), and Rockville Economic Development (REDI) to support the recruitment of larger healthcare companies to the region by providing market research and accessing industry networks.

Global-oriented or ethnic-based chambers of commerce and business interest groups—Maryland China Business Council, Korean American Chamber of Commerce, Asian Pacific American Chamber of Commerce, Jiangsu International Chamber of Commerce, Chinese Biopharmaceutical Association, and the Maryland India Business Roundtable, etc.

5

One-year Implementation Plan

The one-year plan will build upon the 90-day plan to complete some unfinished activities and build a structural foundation for future years of the Intermediary's operations. Priorities including funding, leadership, and capacity building will be the priorities of this stage.

Goal #1—Funding for Operation:
Generate a minimum of $1 million per year in additional funding for operating capital from multiple sources to supplement for years two and three.

1. Use federal, state or other grants (generated from fall 2011) to hire a grants manager for the organization to apply for global, Federal, Regional, State grant opportunities from Government, Foundation, and Industry sources to support projects and programs of the Intermediary.

2. Confirm a firm three-year commitment of funding support from board members, key stakeholders and other private funding sources for the Intermediary's operation.

Goal #2—Leadership:
Build a key leadership team to launch the Intermediary.

1. Finalize the board and launch the Intermediary
   a. Define total number, working committees and terms of service of the board
   b. Designate chairman of the board
   c. Formally launch the 501c3 organization (fall 2011)

2. Hire the President and CEO of the Intermediary (by first Quarter 2012)
   a. Develop a job description and an organization description
   b. Conduct a national search

3. Hire VP/COO for Operations and Finance to oversee operations and fund-raising activities including supervising the manager of grants programs.
   a. Develop fundraising goals and raise funds from multiple sources for the operation of the Intermediary's personnel and work programs.
   b. Supervise the grants manager in identifying more federal funding opportunities.

Goal #3—Capacity Building:
Develop key work teams and programs within the Intermediary to focus on various stages of the commercialization solutions based on market intelligence and research.

1. Build a staff to carry out the core functions of the Intermediary:

    a. Hire the Administrative Assistant to provide central support for the President/CEO and the VP/COO.

    b. Hire the Director for federal/university tech transfer and commercialization and two specialists to focus on commercialization in the following industries: 1) bioscience/medical device/health specialist and 2) IT/cyber security/e-health/mobile health.

2. Develop an internship program to support all aspects of the Intermediary's operations and provide a pipeline of future home-grown talent and reduce brain drain.

    a. Recruit 3-4 one-year interns from local universities and colleges including Johns Hopkins Biotechnology Program, MBA candidates from Johns Hopkins Carey Business School and the University of Maryland's Smith Business School to take on research, communication and marketing and other related functions.

    b. Recruit 3-4 undergraduate students (for summer or for school year) from Montgomery College, the Universities at Shady Grove and UM Baltimore County both to support research and operational needs.

3. Establish interim work teams to support the key programs of the Intermediary by tapping into the existing resources of the private sector, universities, economic development agencies and technology-based trade associations. These work teams will be led by professionals and staffed primarily by graduate and undergraduate interns.

    a. A market research team to study and track the trends and needs of the domestic and global markets in BioHealth products and applications.

    b. A deal flow and due diligence team to identify prospective commercialization technologies for product development from federal and university Labs, biotech industries, biotech incubators, and other U.S. and global markets.

    c. An underwriting team with expertise in biopharmaceutical & diagnostics, medical device and equipment, and health IT and services to assess funding eligibility and market value of projects.

    d. A marketing and distribution team to focus on domestic and global market product marketing & distribution.

Goal #4—Knowledge Building:
Develop a body of knowledge related to the market needs, industry trends, funding sources

1. Develop a detailed cluster analysis of local bioHealth and related industries in the region.

2. Develop the following electronic databases of all entrepreneurial, financial and innovation resources in the region by utilizing the internship program and existing private and public resources.

    a. A database of all federal and university tech transfer and commercialization resources
    b. A database of funding sources
    c. A database of early stage companies in the region
    d. A talent data bank of entrepreneurs and senior managers in BioHealth in the region and the nation
    e. A database of national and international partners including similar regional BioHealth-oriented intermediaries
    f. Any other resources that are key to the success and operations of the Intermediary

Goal #5—Funding for Early Stage Companies:
Attract early-stage and venture funding for biotech companies and create access to capital through a network of existing angel funds, venture firms, debt funding sources, boutique healthcare investment banks and Small Business Innovation Research (SBIR) and foundation funding sources.

1. Identify and develop an investment package, both financial and others, for BioHealth related investments and offer compelling and unique value propositions for investing in the region's BioHealth businesses.

2. Create an early stage capital seed and angel fund, managed by the Intermediary, from local, regional, national, and off-shore investors.

    a. Designate a "Capital Markets and Investment Funds" portfolio manager

    b. Engage top bio companies in the region to invest in a local VC/early stage fund.

    c. Explore retirement funds of Montgomery County government and other state and local government agencies as potential investors of BioHealth companies.

8

d. Reach out nationally to the BioHealth investment companies to develop a network of national and global private equity and venture capital investors.

e. Host a symposium similar to the Cleveland Clinic's BioHealth Conference and the joint meeting between the Johns Hopkins University Alliance for Science and Technology Development and the University of Maryland Baltimore's Commercial Advisory Board to attract venture capital funds and strategic investors and bankers.

f. Develop a mechanism of soft landing for international BioHealth companies and entrepreneurs. Target potential international investors and explore the EB-5 visa program for immigrant investors interested in the U.S. market by working with the Maryland Department of Business and Economic Development (DBED) and immigration attorneys on EB-5 requirements for Maryland, especially for Baltimore, which likely has a lower threshold of requirement.

Goal #6—Deal Sourcing:
Identify initial commercialization deal prospects locally, regionally, and globally to facilitate tech transfer and commercialization.

1. Work with federal tech transfer offices and the Small Business Innovation Research (SBIR) Offices including the NIH, NIST, FDA, NCI and DOD (Department of Defense).

    a. Identify 150 prospective technologies from each of these tech transfer and SBIR offices.

    b. Address barriers to tech transfer such as the conflict of interest policy at NIH and designate staff liaisons with federal labs.

    c. Subscribe to software to help identify and track biotech companies' pending FDA drug applications in the pipeline (through MCDED).

    d. Work with NIST to evaluate creation of a dedicated cybersecurity incubator/accelerator in Montgomery County.

2. Work with Johns Hopkins and University of Maryland tech transfer offices to establish a process to identify prospective technologies.

3. Work with the private sector partners to identify prospective technologies and early-stage companies and their research projects (see "deal sourcing" below) including:

    a. Private serial entrepreneurs;

   b. Established BioHealth companies;

   c. Trade organizations (MD Bio, Tech Council of Maryland); and

   d. State and local business incubators (Montgomery County, UMBC, JHU, U of Baltimore, UMDCP), and post incubator stage companies.

4. Convert one of Montgomery County's business innovation centers (incubators) into a dedicated BioHealth accelerator.

5. Work with other U.S. and global BioHealth discovery sources.

Goal #7—Underwriting and Funding the early-stage companies:
Provide screened, qualified candidate start-up companies with management counsel, business plan development support, network connection and access to early stage capital.

1. Partner with established underwriting organizations such as the local RRD International on biopharmaceutical and diagnostics and the Cleveland-based BioEnterprise on medical device and equipment team and on health IT and services. The underwriting criteria will include the following:
   a. Is there a market for the product or service;
   b. Is the product or service unique in the market;
   c. Is there a capable management team to commercialize the product or service; and
   d. Does the net revenue projection in the business plan provide adequate returns to the equity investors

2. Identify 10-15 promising early stage companies in each of the above industries and present these candidate start-ups to the appropriate capital market sources for early stage funding.

3. Develop a feeder funding network to connect capital markets and funding sources with promising projects. Tentative goals for the first year (dependent on hiring of qualified CEO and Investment team):
   a. 20 Venture Firms with BioHealth Focus;
   b. 10 Investment Banks with BioHealth Focus;
   c. 5 Commercial & VC Debt Funding Sources; and
   d. 5 Government Grant Funding Sources.

Goal #8—Talent Recruitment and Nurturing:
Build and recruit a pipeline of experienced serial entrepreneurs and BioHealth managers.

1. Management talents:

a. Work with industry leaders, trade associations and the region's top headhunters to develop a senior BioHealth and health product management team to attract executive level managers to the region from major pharmaceutical companies, BioHealth companies, outside consultants from BioHealth and health care products industry, and all professionals with strong career backgrounds in developing and managing the growth of new biotech and healthcare related businesses and ventures.

b. Develop a program to nurture and grow regional BioHealth management talents modeled after other regions' successful practices such as the Kansas-based Pipeline Entrepreneurship Fellowship and the BioEnterprise and in partnership with universities' training resources.

c. Develop a formal mentoring network made of retired and experienced biotech CEOs in Residence, outside consultants from biotech and healthcare industry, and university business school mentoring programs.

2. Develop a serial entrepreneur network made of BioHealth entrepreneurs from private industry within and outside the region as well as federal labs, and university labs.

    a. Develop a compelling relocation package and a value proposition that attracts seasoned entrepreneurs drawn to the region's unmatched assets, growth potential and the rare opportunity to be part of a regional transformation.

    b. Source the talent pools, both locally and globally, through a variety of industry and professional networks, programs and venues.

Goal #9—Marketing and Branding
Develop a globally recognized brand and marketing strategy to market the translational research opportunities and brand the region as a world-class BioHealth hub.

1. Identify target domestic and global target markets.
2. Identify and negotiate partnership agreements with private firms in these markets to market and distribute the products and services of the early stage companies into these markets.
3. Identify an iconic private sector BioHealth leader/champion and establish the "Marketing, Communication and Market Research" unit of the Intermediary.

4. Develop a comprehensive branding and marketing campaign with compelling messages and unique value propositions of the region's BioHealth assets and an ensemble of communication mechanisms for partners and the larger bio and business community.

5. Develop a dynamic web site that links to key human, financial and technical resources in the region and appeals to broader local and global communities.

6. Proactively recognize business success stories and connect regional BioHealth companies with international markets.

7. Promote the Intermediary as a soft landing mechanism for international companies:

    a. Cultivate relationships with the international populations in the region, especially the ethnic-based chambers of commerce and other trade and professional associations.

    b. Partner with economic development agencies and organizations to identify and target international BioHealth companies poised for U.S. market entry.

8. Engage local biotech executives as ambassadors to cultivate relationships with large pharmaceutical companies, VCs, and international biotech companies.

Future Year plans

Year two should start with an evaluation of the benchmarks and adjusting the goals and metrics accordingly. Besides the continued emphasis on building a funding network and a senior technical, managerial and entrepreneurial team to focus on product development and commercialization, the Intermediary should also consider other priorities such as improving the BioHealth regulatory environment, and building a local-grown pipeline of bioscience, managerial, and entrepreneurial talent. Examples include:

1. Collaborate with universities and public schools to increase the number of science, technology, engineering and math (STEM) students in higher education and develop programs to feed the pipeline of researchers and scientists.

2. Attract internationally renowned colleges and universities from abroad with strong science and technology programs to open branch campuses in the region.

3. Lobby Congressional representatives about tax incentives for bioHealth investments such as reducing the capital gains tax for investments into the R&D and commercialization of certain areas with demonstrated market needs but no available cures.

Appendix E: US v. Byung Bang - Stipulated Facts

ATTACHMENT A
Stipulated Facts: United States v. Byung Bang

The parties hereby stipulate and agree that if this case proceeded to trial, the United States would prove the following facts below beyond a reasonable doubt. They agree that these are not all of the facts that would be proved if this case proceeded to trial.

Between at least in or about 2010 and in or about 2016, in the District of Maryland and elsewhere, the Defendant, **BYUNG BANG, a/k/a "Peter Bang" ("BANG")**, devised a scheme and artifice to defraud and obtain money from the government of Montgomery County, Maryland, by means of materially false and fraudulent pretenses, representations, and promises, with the intent to defraud and with knowledge of the scheme's fraudulent nature ("the scheme to defraud"). As part of the scheme to defraud, **BANG** embezzled money from the government of Montgomery County using fraudulent entities that **BANG** controlled and directed. **BANG** directed funds from Montgomery County to **BANG**'s fraudulent entities. These funds were supposed to support an economic development agreement between Montgomery County and the Chungcheongbuk-Do province of South Korea. **BANG** then failed to report the money that he embezzled from Montgomery County on his individual income tax returns. **BANG** willfully made and subscribed false tax returns for the tax years 2010 through 2015, which contained written declarations made under the penalties of perjury, and which he did not believe to be true and correct as to every material matter. In total, **BANG** embezzled $6,705,669.37 from the Montgomery County government.

I. Wire Fraud

From at least 2010 through approximately July 2016, **BANG** was employed as the Chief Operating Officer ("COO") of the Department of Economic Development for Montgomery County, Maryland ("MC-DED"). MC-DED's stated purpose was to assist private employers who were located, planned to locate, or substantially expanded operations in Montgomery County. In 2016, the MC-DED was privatized and **BANG**'s position within Montgomery County was moved to the Montgomery County Department of Finance where he was employed until May of 2017.

One of the ways that MC-DED accomplished its goal of assisting private employers within Montgomery County was through the creation of business incubator and/or innovation centers. These incubator/innovation centers helped small businesses by giving them below-market rent, placing them in an environment with other similar businesses, and providing them education on how to run a business. The goal of the program was to help the business to grow so it could graduate from the incubators and relocate within Montgomery County, thus bringing jobs and revenue to the County.

Montgomery County had several incubators throughout the County that had different areas of focus, such as computer technology; biological technology; and small minority- and women-owned businesses. Each of these incubator/innovation centers brought in their own money from rent but were subsidized by MC-DED. As COO of MC-DED, **BANG** oversaw budgets for these incubators. **BANG** was authorized by the County to request disbursements of County funds to the incubators to help the program. From time to time, **BANG** would "park" money in incubator accounts so that the money was more readily available and accessible for MC-DED projects. If **BANG** did not park the money in the incubator accounts, the money would be placed in the County's general fund and potentially would be unavailable for future MC-DED projects. **BANG**'s position at the MC-DED enabled him to authorize and direct the disbursement of money from County partners, including the Maryland Economic Development Corporation ("MEDCO") and the Maryland Conference & Visitors Bureau, without any significant oversight or approval.

A. Business Relationship between Montgomery County and South Korea

In 2010, Montgomery County and Chungcheongbuk-Do, a province in South Korea ("Chungbuk Province"), entered into an agreement where Chungbuk Province would provide $2,000,000 to Montgomery County to assist in developing an incubator fund. Those funds resulted in the issuance of two business loans that later were repaid. In 2015, Montgomery County returned the $2,000,000 at the request of Chungbuk Province.

B. Establishment of Chungbuk Incubator Fund LLCs To Facilitate Fraud Scheme

On or about July 22, 2010, **BANG** caused Articles of Incorporation to be filed with the Maryland State Department of Assessments and Taxation ("MD-SDAT") for a company named Chungbuk Incubator Fund LLC. On August 25, 2014, **BANG** filed Articles of Cancellation with MD-SDAT for Chungbuk Incubator Fund LLC.

On June 23, 2015, Articles of Incorporation were filed with MD-SDAT for a company also named Chungbuk Incubator Fund LLC. On December 11, 2015, Articles of Cancellation were filed for Chungbuk Incubator Fund LLC (collectively, both cancelled LLCs are referred to as the "Chungbuk Entities"). **BANG** is not listed on the Articles of Incorporation as a stockholder, member, or registered agent; however, **BANG** directed Individual 1, a person whose identity is known to the United States, to organize the Chungbuk Entities. **BANG** exercised control over bank accounts opened in the name of the Chungbuk Entities. On the Articles of Cancellations for each LLC, **BANG** was listed as the member designated to wind up the affairs of both entities. **BANG** opened four bank accounts in the name of "Chungbuk Incubator Fund, LLC," listing his home address as the address of the LLC. **BANG** was either the sole signatory, or a joint signatory, on these accounts.

C. **BANG**'s Theft of Montgomery County Money

Between 2010 and 2016, **BANG** fraudulently authorized the disbursement of approximately $6,705,669.37 from Montgomery County to the Chungbuk Entities' bank accounts controlled by **BANG**. Specifically, between 2010 and 2016, **BANG** caused the Montgomery County Department of Finance to send checks and direct deposit transfers totaling $5,447,964 to the Chungbuk Entities' bank accounts. During that same time, **BANG** caused the Maryland Economic Development Corporation to send a total of $1,213,987.63 to the Chungbuk Entities' bank accounts. Also during this same time period, **BANG** caused the Maryland Conference and Visitors Bureau to send a total of $43,717.74 to the Chungbuk Entities' bank accounts, purportedly

2

to relocate tenants of an incubator center. Unbeknownst to Montgomery County, these payments were all made to bank accounts controlled by **BANG**.

In furtherance of his scheme to defraud, **BANG** created nominee entities to issue fraudulent invoices on his behalf, and opened bank accounts in the name of the nominee entities to hold the embezzled funds for his personal use.

BANG used the interstate wires in furtherance of his scheme to defraud. For instance, in 2015, as part of his scheme to defraud and with the intent of stealing money from the Montgomery County government, **BANG** knowingly caused the following electronic transfers from a bank account controlled by the Montgomery County government to **BANG's** Chungbuk bank account:

Date	Amount
August 10, 2015	$521,484
October 15, 2015	$360,000
November 25, 2015	$315,000

These funds were transferred in interstate commerce through wire transmissions sent from within Maryland through servers outside of Maryland. Furthermore, in order to conceal the proceeds of his scheme to defraud, on April 10, 2016, **BANG** caused to be filed a federal tax return, by electronic means, that knowingly and intentionally failed to include income received by **BANG** through the Chungbuk Entities.

D. <u>Montgomery County Ethics Requirements</u>

As an employee of Montgomery County, **BANG** was required to comply with various ethics regulations, including Montgomery County Code, Chapter 19A, Ethics, Article III. That article prohibits an employee from participation in any matter that affects any (1) business in which the employee holds an economic interest, or (2) matter, if the public employee knows or reasonably should know that any party to the matter is a business in which the employee has an economic interest or is an officer, director, trustee, partner, or employee.

BANG filled out financial disclosure statements for the years 2012, 2013, 2014, 2015, and 2016. Those statements required **BANG** to disclose information such as real property holdings; sources of income; whether **BANG** had a confidential relationship with the income source; the type of income received; and the amount of income received. **BANG** did not disclose his interest in the Chungbguk Entities in his 2012, 2013, 2014, 2015, or 2016 financial disclosure statements, and he did not disclose the type or amount of income received from the Chungbuk Entities.

II. Fraud and False Statements on Tax Returns

BANG caused to be filed with the IRS false U.S. Individual Income Tax Returns, Forms 1040, for the tax years 2010 through 2015, in which **BANG** knowingly and willfully failed to report income **BANG** embezzled from Montgomery County. For each of these years, **BANG** also filed false U.S. Returns of Partnership Income, Forms 1065, which failed to include any income that the Chungbuk Entities received from **BANG**'s scheme to defraud Montgomery County.

While engaging in the scheme to defraud, **BANG** willfully failed to report the money he embezzled from his scheme to defraud Montgomery County on his individual income tax returns for the tax years 2010 through 2015. **BANG** signed each of these tax returns under penalties of perjury and filed them with the IRS. At the time **BANG** signed these returns, **BANG** knew that the returns were materially false. In total, for the tax years 2010 through 2015, **BANG** failed to report $6,367,745.07 in funds that he embezzled from Montgomery County, resulting in a tax loss to the IRS of $2,335,913. More specifically, **BANG** embezzled the following amounts each year from Montgomery County and failed to report those funds to the IRS as follows:

Tax Year	Unreported Income	Tax Due & Owing
2010	$492,314.00	$159,603.00
2011	$1,080,613.30	$370,573.00
2012	$665,826.77	$224,106.00
2013	$1,782,616.50	$690,641.00
2014	$948,059.00	$353,310.00
2015	$1,398,315.50	$537,680.00
TOTAL:	**$6,367,745.07**	**$2,335,913.00**

Specifically, on about April 10, 2016, **BANG** signed a 2015 U.S. Individual Income Tax, Form 1040, under penalties of perjury stating that his tax due and owing was $47,675. **BANG** electronically filed this tax return. In fact, as **BANG** knew, his tax liability for the 2015 tax year should have been $585,355. On his 2015 tax return, **BANG** knowingly and willfully failed to report to the IRS $1,398,315.50 that **BANG** embezzled from Montgomery County through his fraudulent scheme.

* * *

I have read this statement of facts, and have carefully reviewed it with my attorney. I acknowledge that it is true and correct.

10-25-2018
Date

Byung Bang

I am the attorney for Byung Bang. I have carefully reviewed the statement of facts with him.

Oct 25, 2018
Date

Gerald W. Kelly, Jr., Esquire.

4

If you are aware of fraud or misconduct in County government activities, contact the County Inspector General

Montgomery County Maryland
Office of the Inspector General

20

Ensuring Government Accountability Since 1998

On April 6, 1998, Norman D. Butts was appointed as the first Inspector General of Montgomery County, Maryland. Mr. Butts' appointment followed the creation of the Office of the Inspector General through a Bill passed in 1997 that was sponsored by then Councilmembers Isiah Leggett, William E. Hanna, Jr., Gail Ewing, Derick Berlage, and Michael L. Subin.

Confidential OIG Hotline: 240 777 7644

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Inspector General

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