Final Report

Accounting, Procurement, and Personnel Internal Controls Failed to Detect Problems in the Office of Human Resources (OHR)

OIG Publication # 20-001

July 11, 2019

Montgomery County, Maryland
Office of the Inspector General

Executive Summary

This inquiry was initiated based on numerous complaints the Office of the Inspector General (OIG) received alleging improper personnel practices within the Office of Human Resources (OHR). One of the complaints focused on an individual we were told was initially engaged as a contractor for OHR and later was one of multiple individuals hired as an employee at a level above the midpoint of the grade's salary range. Many of the other complaints also identified as an issue the hiring of specific individuals at levels above the mid-point of their grades, noting that no review or approval was required other than that of the OHR Director[1]. The OHR Director approves or denies requests from other department directors for salaries for hires above the midpoint of the grade's salary range[2]. We determined that certain of the other allegations we received were under the jurisdiction of the Merit System Protection Board, and in some cases we did not substantiate the allegations.

During our inquiry into the circumstances of the consultant's work and hiring, we noticed certain procurement irregularities: that the consultant worked on four contracts with OHR that appear to have been related split procurements in circumvention of County laws requiring competition and that payments were made that exceeded the limits on the contracts[3]. We requested payments information and an analysis from the County's Department of Finance and received that analysis in December of 2018. That analysis indicated that there was an appearance of split procurements.

As we analyzed the reasons for the apparent split procurements and possible overpayments, we found instances in which it appeared that OHR did not follow County laws and procedures. We also found weaknesses in the accounts payable system and opportunities for improvements in the County's procurement laws and personnel regulations. It appears that the weaknesses we found that applied to the transactions of the Office of Human Resources are systemic and would apply to similar transactions initiated by any Office or Department of the County government.

We understand that the Department of Finance adopted new policies and procedures in 2018. If the County has implemented new procedures addressing the recommendations in this report, we have not found these in written policies and procedures and have not tested them, so our recommendations are appropriate.

Our review identified six findings, which are noted in the Table of Contents, and makes the six recommendations summarized following the Table of Contents

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[1] Additional allegations included that the Director at that time, who has since left County employment, hired friends and/or co-workers for high level positions without disclosing the relationship or a potential conflict of interest. We received anecdotal statements that could not be corroborated that the OHR Director rigged the process. We could not find sufficient evidence to substantiate these allegations. County laws do not bar County managers from hiring friends or former colleagues.

[2] COMCOR §33.07.01.10-5(b)(2), (9).

[3] See Appendix D.

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List of Recommendations

Accounting, Procurement, and Personnel Internal Controls Failed to Detect Problems in the Office of Human Resources

Background

Objectives, Scope, & Methodology

Information about our objective, scope, and methodology is addressed in Appendix B.

Legal Requirements

Competition requirements are common in federal, state, and local government, to obtain better value and to reduce vulnerability to fraud, waste, and abuse.

The County has competition requirements that apply at certain dollar thresholds, as explained by the website of the Office of Procurement:

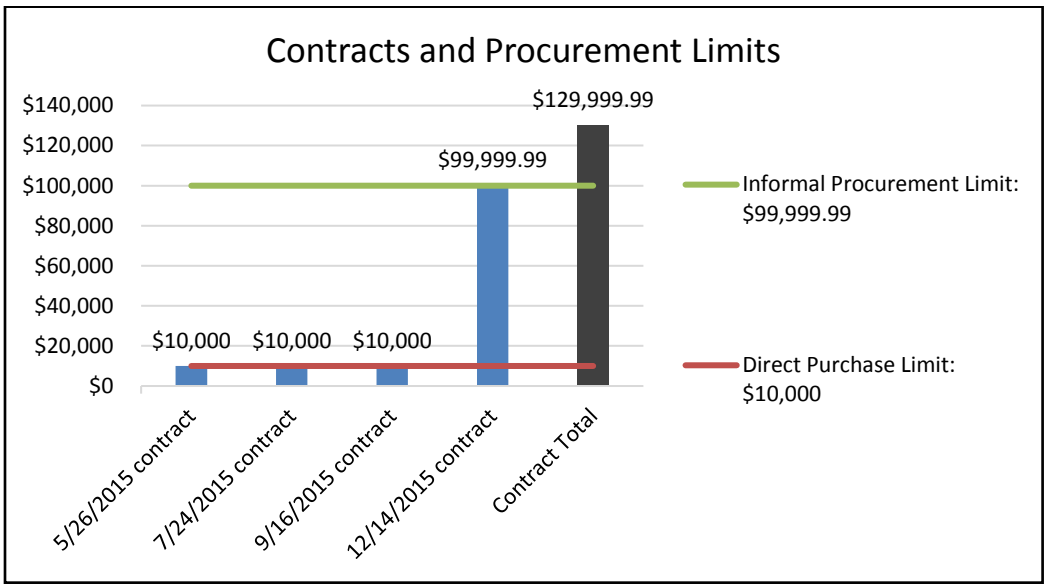
- "Purchases of $10,000 and below have been delegated directly to each Using Department Head and it can issue direct purchase orders to acquire goods and services with a total value up to this dollar threshold."
- "Purchases above $10,000 and below $100,000 follow an informal procurement process."
- "Purchases of $100,000.00 and up must follow the competitive sealed bid, proposal or request for expression of interest procurement process."

County regulations prohibit splitting purchases to remain under these thresholds and state that "When the need for a particular product or service occurs within a reasonable time frame and can be consolidated, the purchase must be consolidated and not subdivided"[4].

[4] Code of Montgomery County Regulations (COMCOR) 11B.00.01.04.1.9.2; 11B.00.01.04.1.7.2; 11B.00.01.04.1.8.1.

Four Related OHR Contracts

The following chart shows the four contracts we reviewed compared to procurement thresholds.



The total of the OHR contract amounts at issue ($129,999.99) exceeded the informal procurement limit.

OHR formed four contracts within seven months related to the evaluation of candidates for County employment. The first three contracts were between the County and the individual. The fourth was between the County and an LLC that was wholly owned by that individual and had no employees other than the individual.

Prior to entering into the fourth contract, OHR requested that it be a sole source[5] contract, but the request was not granted. At the time the former OHR Director made this request, the $30,000 limit on the three contracts was close to being reached[6]. By making the three smaller contracts, the former Director had already committed to a course of action with the selected vendor, because at that point, it might have been impractical to have done otherwise.

The following excerpts from the contracts' scopes appear similar.

- 1st contract: "help the County determine next steps to identify, define, and implement standard policies and practices that ensure all candidates are evaluated and considered for positions fairly and in accordance with…guidelines."
- 2nd contract: "Define a standard policy and practice…to use in evaluating both internal and external candidates' qualifications"
- 3rd contract: "Defining a standard policy and practice…to use in evaluating both internal and external candidates' qualifications"

[5] Under County law, a non-competitive contract, also termed a "sole source" contract, may be granted if the performance or delivery dates required by the County can only be met by one source. County Code § 11B-14(a) and COMCOR 11B.00.01.04.1.12.3(a)(2).

[6] The Director made this request of Procurement on September 25, 2015, and the invoice for the month of September 2015 would bring the total billed by the contractor to $26,200.

- 4th contract: "Define and operationalize the policy, SOPs, communication plan, training, and procedures for the Candidate Minimum Qualification Process."

All four contracts were for amounts at the upper limits for the types of procurement. The three $10,000 contracts were awarded at the limit for direct purchases. The fourth contract was at the limit for informal procurements; it was for an amount that was only 1¢ below the $100,000 threshold at which more competition requirements would apply.

The Office of Procurement advised that a contract's stated upper limit was a control measure so the Department and the Contractor would be clear as to the maximum amount that could be billed under the contract, which was a service contract to be used as needed, with fixed hourly rates.

In addition to payments identified with the contracts, OHR also made seven other payments totaling $54,900.01 for a grand total of $184,900 paid to the individual and the LLC. This work should have been considered as a whole and competitively bid and awarded through the normal competitive procurement process.

Controller Review Found Appearance of Split Procurements

The Department of Finance did not review these procurements at the time they were made, because County policies did not require this at that time. After we requested information from the Controller regarding these procurements, he applied a new compliance process in December 2018 that he was already planning to implement in February 2019. The Controller agreed that procurements in this set appeared to be split procurements.

The Office of Procurement did not review these procurements other than reviewing the fourth contract, as that office only saw the fourth contract and would normally not have seen the contracts or payments made under the former OHR Director's direct purchase authority. The Director of Procurement advised us that the Office of Procurement occasionally reviews direct purchases for possible violations. However, the Office of Procurement does not keep records of how many of these reviews are done, and the review is not frequently done.

Based on an OIG review of accounting data, we have reason to believe that the split contracts issue may not be an uncommon problem in the County. In 2017, we also found and reported that splitting contracts has occurred in another County office: the Wheaton Urban District[7].

A County Manager wrote to us that he believes it likely that OHR may not have accurately estimated/anticipated the level of effort required to implement such a dramatic change in process. It is not inconceivable that the project was poorly planned and executed. However, a mistake in estimating a contract should not result in waivers from procurement regulations. Instead, the contract should be amended to include the higher agreed upon amount, and it should go to the CAO for approval, with the justification documented. Depending on the dollar level of the amendment, competitive procurement could be appropriate and required.

[7] Improper Procurement of Gateway Signage by the Wheaton Urban District, OIG Report 18-001, June 19, 2017.

It appears that OHR identified a contractor that OHR wanted to perform a specific task and intentionally took steps, as discussed in Finding 1 through Finding 5, to ensure that OHR could quickly select this contractor without going through the formal County procurement process and meeting all the County requirements for that process. At this point, the Chief Administrative Officer and the County Attorney may wish to consider whether anyone remains in County employment who can be held accountable for these actions.

Contracts

Finding 1: A contractor had input into the writing of a solicitation.

Legal Requirements

1) County Code Chapter 11B. Contracts and Procurement § 11B-52. Ethics; Contractor conduct states that

> "(b) A contractor providing an analysis or recommendation to the County concerning a particular matter must not, without first obtaining the written consent of the Chief Administrative Officer…seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County."

The County Attorney has written in a legal opinion that "Section 11B-52(b) eliminates the temptation for a consultant to recommend specifications that the consultant would be uniquely qualified to fill by preventing the consultant from submitting a proposal."[8]

If the CAO finds that an action which would otherwise violate Section 11B-52 would not impair the public interest, the CAO may consent to such an action by a contractor[9].

2) County Code Chapter 11B. Contracts and Procurement § 11B-19. Specifications states that

> "Specifications should be prepared to encourage, to the extent practical, maximum competition. Specifications must not be prepared to favor a

[8] County Attorney Opinion Sept. 8, 1998. The Opinion noted that Maryland law specifically prohibited an individual who assists state government in drafting specifications for a procurement from submitting a bid or proposal for that procurement.

[9] Section 11B-52(b), (d).

prospective bidder or offeror. The specifications should describe the minimum valid needs of the County."

OHR Received the Pre-Selected Vendor's Advice on the Solicitation

On September 21, 2015, the former Director of OHR emailed a draft of a fourth contract's Statement of Work to the contractor and asked the contractor to review it, writing, "please see the tracked changes. If you are good, please confirm and I will then forward this onto [the Administrative Services Lead] for processing." On September 23, the contractor emailed a reply to the former Director that "The changes are fine."

On September 25, 2015, the former OHR Director wrote a memo to an Office of Procurement Division Chief requesting approval to execute a $99,999.99 non-competitive contract with the contractor. The former OHR Director emailed the Assistant CAO on September 29, 2015 stating the Director's intention to award the contract without competition to the contractor.

The Administrative Services Lead in OHR sent a draft of the contract to the contractor on October 1, 2015, requesting, "can you please take a look to make sure I've captured your services correctly."

The Office of Procurement did not approve the proposed award of a sole source contract and on October 9, 2015 asked OHR for further information regarding how the contractor "would be uniquely qualified" and how using this contractor would save the County costs and time.

OHR then proceeded with the procurement as an informal procurement and posted the solicitation.

During this time period, the contractor was assisting OHR with the Candidate Qualification Analysis, as shown in two invoices covering September 1, through October 22, 2015. One invoice stated the Contractor was billing the County for having "Reviewed, discussed and revised high-level implementation plan, approach, key policy related enhancements," and the other stated the Contractor was billing the County for having "drafted detailed project plan, revised high level implementation plan, drafted project measures and service level standards." Both of these appear to be related to the Scope of Work that the Contractor reviewed, which stated "Requirements" and "Deliverables" for the "Implementation of Candidate Qualification Policy, Internal Standards and Service Level Agreements," among other things.

Timeline for Development of Fourth Contract

Date	Event
9/21/15	Director emails Contractor a draft for a contract not to exceed $99,999.99
9/23/15	Contractor emails Director that Contractor agrees with draft
9/25/15	Director requests Office of Procurement approval of non-competitive contract
10/1/15	Admin. Services Lead emails draft contract to the Contractor for review
10/9/15	Office of Procurement does not approve non-competitive contract and asks for further justification
Oct. '15	OHR proceeded with an informal solicitation, apparently with Procurement approval
12/1/15	Director informs Office of Procurement that LLC was chosen out of two vendors
12/14/15	Contract signed by Office of Procurement

CAO Waivers

County Code Section 11B-52(d) states that, "If, the Chief Administrative Officer, after finding that the action would not impair the public interest, consents to any action under subsections (b) or (c), the Chief Administrative Officer must promptly notify the Ethics Commission." In this case, there was no such notification of the Ethics Commission.

We have found that the CAO has similar authority to waive requirements regarding payments from the Employees' Retirement System. In that case, there was no documentation of the request to the CAO or of the CAO's decision, as the relevant County law required.

The Maryland General Procurement Law does include formal requirements for waivers. It requires that

> "Each determination required under [the General Procurement Law] shall be:
> (1) in writing;
> (2) based on written findings of the public official or employee who makes the determination; and
> (3) kept, for at least 3 years, in an official procurement contract file."

Fairness

We have reason to believe that this pre-selection may not be an isolated occurrence: the Procurement Policies and Regulations Task Force wrote to the Council's Government Operations and Fiscal Policy Committee on October 9, 2015 that "there is a perception among prospective offerors that the County's procurement system is not fair,", and "there is a perception that the County is unwelcoming of new entrants."

As the language in County Code § 11B-52(b) is not clear to us, we did not draw a conclusion about whether a violation appears to have occurred in this case.

A contractor who violates § 11B-52 is subject to punishment for a class A violation of the County Code. Had we discovered this earlier, we might have referred this to the County Attorney to determine whether a legal violation had in fact occurred and asked management to take appropriate action. Given the time that has passed and the change in circumstances, it no longer seems appropriate for us to do so. However, the County Executive and the County Attorney may decide after reading this report to determine whether a legal violation occurred. A violation of § 11B-19 regarding specifications is not a Class A violation.

Even if there was no violation of law, it appears unfair that a vendor had input into the drafting of a solicitation. OHR only went through the motions of a competitive procurement: the contractor had been pre-selected, and any other vendors were denied a fair chance. An unfair process can result in vendors and County employees wasting their time, harm to the County's reputation, and the County possibly receiving higher priced or lower quality services.

Recommendation 1

We recommend that (a) County Code Chapter 11B. Contracts and Procurement Sec. 11B-52 Ethics; Contractor conduct be amended (i) to clarify what conduct is prohibited, and (ii) to require that any waivers by the Chief Administrative Officer be supported by findings and substantial evidence, and that (b) the County should apply administrative consequences for managers and staff who violate Section 11B-19 Specifications or lead a contractor to violate Sec. 11B-52.

Finding 2: Records are in conflict regarding whether OHR posted the solicitation for the required number of days.

County Code § 11B-17A requires that a solicitation such as this, termed an informal solicitation, be posted for at least five business days. County regulations require that an informal procurement be announced to at least five potential offerors.

A memorandum from the former Director of OHR to a Division Chief in the Office of Procurement stated that OHR posted the solicitation from October 28, 2015 through November 2, 2015. This timeframe included a weekend, so it was only four business days. Other documentation indicates that on the morning of October 26, 2015, OHR requested that the procurement be posted from that day through November 2, 2015. We note that evidence of a request to post does not prove that there was a posting that day.

Additionally, screen captures of the County Procurement website from the Internet Archive dated October 26, 2015 and November 1, 2015 state, "There are no Informal Solicitations at this time."

The OHR employee responsible for posting the informal procurement was the Administrative Services Lead discussed above.

Only one other vendor besides the contractor's LLC responded to the solicitation. This vendor was one of the five vendors OHR contacted regarding the solicitation. The contractor's LLC was awarded the contract.

An additional issue with this contract award was that the contractor's LLC was located in the District of Columbia and was either not registered in Maryland or had forfeited its Maryland registration at the time its fourth contract was formed. Maryland law requires that out-of-state businesses doing business in Maryland register in Maryland.[10] A presentation from the County's Office of Procurement, "Montgomery County's Contracting Opportunities for Minority, Small, Local Businesses" states that vendors must be registered to do business in Maryland. It appears reasonable to apply this requirement to all businesses. Howard County, Baltimore County, and Prince George's County require their business vendors to register in Maryland.

Recommendation 2

We recommend that the Office of Procurement (a) maintain records of actual posting dates and (b) not approve contracts with contractors not registered to do business in Maryland.

[10] Maryland Code, Corporations and Associations Article §§ 7-202, 1-101(n).

Accounting System

Finding 3: The absence of either a contract number or a purchase order number had the effect of allowing OHR to split a contract for a single purpose into four contracts and seven additional purchases totaling $184,900, thus bypassing the formal competition requirement.

Purchase Order and Contract Numbers

Senior Department of Finance managers informed us that the accounting system has different modules for different subjects – in this case Purchase Orders and Accounts Payable. The Purchase Order number can be used to link data from these two modules. Payments with no Purchase Order number, such as the many in this example from OHR, are thus not linked to contracts.

The Department of Finance's April 1, 2018 *Accounts Payable Section Policies, Authorized Payment*, states that "A Purchase Order (PO) authorizes a specific purchase of goods or services in accordance with a contract executed pursuant to the County's procurement regulations." A purchase order is not required for transactions that are exempt from or not subject to procurement regulations.

The following table shows that out of 27 payments, only 17 had PO numbers, and 13 had contract numbers. "Y" indicates that there was a number; "N" indicates there was not.

Invoices in Payment Data Sent in 2018 by Controller

Date	$ Amount	Invoice from	Payment to	PO #	Contract #
6/22/2015	8,400	Individual	Individual	Y	N
7/22/2015	1,600	Individual	Individual	Y	N
7/22/2015	8,800	Individual	Individual	Y	N
8/13/2015	1,200	Individual	Individual	Y	N
8/13/2015	800	Individual	Individual	N	N
9/30/2015	5,400	Individual	Individual	N	N
10/28/2015	3,800	Individual	Individual	N	N
12/1/2015	12,800	Individual	Individual	N	N
1/8/2016	8,600	LLC	LLC	Y	Y
1/28/2016	8,400	LLC	LLC	Y	Y
3/1/2016	9,800	LLC	LLC	Y	Y
3/23/2016	9,200	LLC	LLC	Y	Y
4/29/2016	8,000	LLC	LLC	Y	Y
5/31/2016	6,000	LLC	LLC	Y	Y
5/31/2016	2,500	LLC	LLC	Y	Y
6/30/2016	7,500	LLC	LLC	Y	Y
6/30/2016	2,300	LLC	LLC	N	N
8/1/2016	8,000	LLC	LLC	Y	Y
9/1/2016	9,200	LLC	LLC	Y	Y
9/30/2016	9,000	LLC	LLC	Y	Y
10/31/2016	10,100	LLC	LLC	Y	Y
11/30/2016*	3,699.99	LLC	LLC	Y	Y
11/30/2016*	5,500.01	LLC	LLC	N	N
1/4/2017	8,700	LLC	LLC	N	N
2/1/2017	9,800	LLC	Individual	N	N
3/16/2017	10,000	LLC	LLC	N	N
3/21/2017	5,800	LLC	LLC	N	N
Total	184,900				

* These two payments made on 11/30/2016 clearly suggest an intentionally split payment.

The payment data provided by the Department of Finance using the Business Intelligence tool included a column labeled "PO Number." This column contained numbers for 17 of the payments we reviewed, but no PO number for 10 of them. One of the payments with no PO number was for $12,800, which is greater than the $10,000 limit on direct purchases. This payment was also coded exempt.

The absence of a PO number should trigger more scrutiny, to determine if the purchase was for $10,000 or under or was accurately coded as exempt. We have no indication that the Department of Finance did either of these.

Although there was no contract number column in the payment data, a text column labeled "Line Description" contained the text "Contract #1059794" for 13 of the payments, all of which were associated with invoices from the LLC. These totaled $99,999.99.

In the payment data, six invoices from the LLC did not have an associated contract number or PO number. These six LLC invoices[11] had a total dollar amount of $42,100.01. Senior Department of Finance managers informed us that there is no requirement to provide a contract number when processing an invoice.[12]

Evidently, there is apparently no requirement for either a purchase order number or a contract number when processing some invoices.

The Department of Finance provided us with three of the six LLC invoices for which the payment data did not show contract numbers. Two of these had the contract number printed on them,[13] which was not entered into the payment data.

Payment to Individual Contractor Based on LLC Invoice

On February 1, 2017, a payment went to the individual contractor, not the LLC, even though the invoice requested payment to the LLC as the supplier. The cover sheet for the invoice stated that the payee name on the invoice was the individual contractor, although it was not. This cover sheet was prepared by OHR. Apparently, the Department of Finance did not check whether the cover sheet matched the invoice.

Accounts Payable managers told us that under current procedures, Accounts Payable staff would key in the invoice information that shows on the cover sheet if the amount of the invoice were $10,000 or more and if Finance were performing shared services for the Department doing the purchasing. Based on this information, as this invoice was for $9,800, Accounts Payable staff would still not key in this information under any current procedures.

Payments Exceeded Contracts

It appears that the entry of contract numbers and the recipient of payments were deliberately managed so the payments linked to contracts would total $99,999.99. This would create the appearance that payments did not exceed the contract limit, when in fact they did.

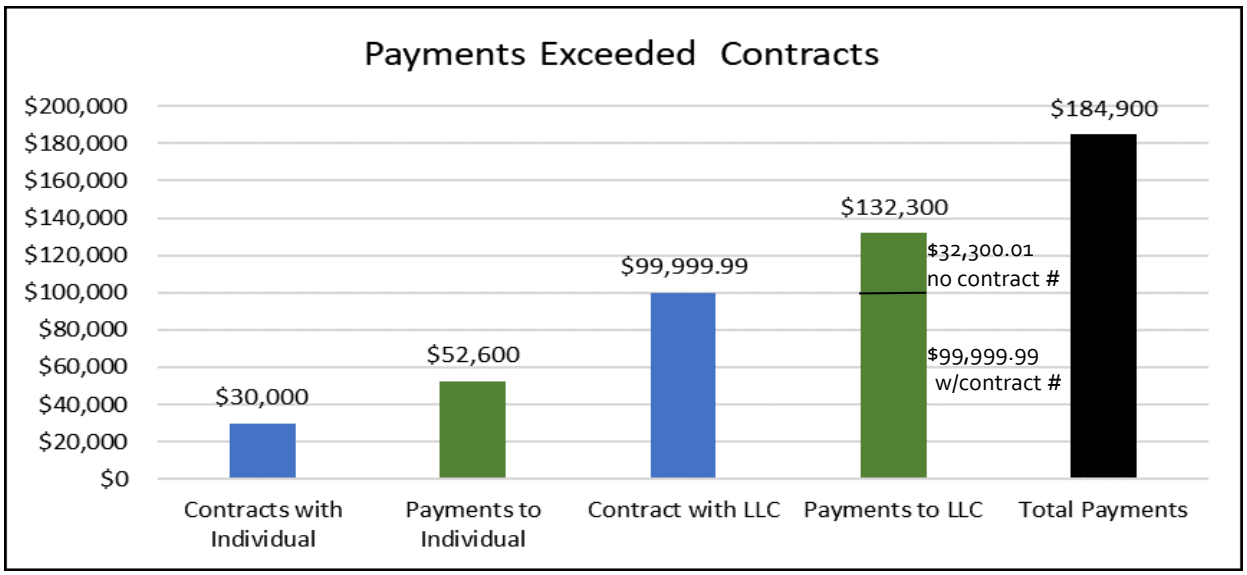
[11] This total is greater than the overpayment to the LLC reported earlier, because this includes the invoice from the LLC that was paid to the individual.

[12] A P.O. number is only required for certain types of payments.

[13] The third had no contract number printed on it. We did not have the other three invoices.

Payment records from the Department of Finance indicate that the total cost of the project to the County was $184,900: $132,300 paid to the LLC and $52,600 paid to the individual contractor.

The following chart shows the amounts paid to the individual and to the LLC compared to the contract limits. The payments to the LLC are broken down by whether or not they had an associated contract number in the Department of Finance data.



In total, the contractor and the LLC together were paid $184,900, which exceeds the total contract amounts by $54,900.01.

Recommendation 3

We recommend that the Department of Finance ensure that (a) the accounting system contains contract or purchase order numbers for every invoice, even for exempt procurements and purchases of $10,000 or less, and that (b) contracts can be clearly and simply matched to all related payments, using a computer match.

Accounting staff indicated that some corrective changes have already been implemented. However, we still see gaps. We have not tested the changes or the revised procedures, and we are concerned that exempt procurements may not receive the same level of scrutiny as other transactions, which we believe is unacceptable. We note that the Accounts Payable policies from April 1, 2018 forward are significantly improved. However, given the importance we attribute to these issues, we thought it appropriate to make these recommendations and highlight that they should apply to exempt procurements and purchases of $10,000 or less.

Exemptions

Finding 4: OHR misused the collective bargaining exemption.

Laws and Policies

The County has a list of "commodity/payment" codes covering purchases or procurements deemed to be exempt from, or not subject to, procurement requirements. A County Internal Audit report dated May 9, 2018, *Internal Control Review, Procure to Pay – Specific Functions*, stated that there were 74 of these codes. The list in April 2019 contained 57 codes labeled as exemptions and 14 codes that are exempt from the Authorized Payment Policy [14]

For 45 of the 57 exemptions, the list references a law, agreement, or a determination of the County attorney as the authority for the exemption, but for 12, none of these is provided, and "Not Subject to Procurement" is stated. Examples of exemptions with legal authorities provided are expert witness services and the Economic Development Fund.

The following are the 12 exemptions marked "Not Subject to Procurement":

1. Background Investigations
2. Executive Orders
3. Franchise Fee Payment
4. Insurance General Liability
5. LID Rebates (rainscapes)
6. Membership Dues
7. Municipality Tax Duplication
8. Neighborhood Improvement Program Reimbursements
9. Overnight Parcel
10. Swim Coach Reimbursables
11. Tuition Payments
12. Utilities (except Long Distance Telephone Service), Cellular Phone.

[14] The list also contains seven codes for contracts for which a streamlined payment method could be used.

Although the Department of Finance's comments in response to the May 9, 2018 Internal Audit report state that the *Authorized Payment Policy* "requires departments to utilize the P-Card or the Direct Purchase Order (DPO) process for paying invoices which are exempt from the procurement process," it is not clear to us from the language of that policy that using a P-Card (Purchasing Card) or a Direct Purchase Order is a requirement. Furthermore, the policy notes that there are exceptions to the policy, and a document titled *Authorized Payment Policy Exceptions* lists transactions that "may be paid via Direct Payments."

OHR Used the Code for Collective Bargaining for Its Candidate Qualification Analysis

In the payment data provided by the Department of Finance in 2018, all nine payments to the individual contractor, totaling $52,600, and none of those to the LLC, were coded "Exempt." "Exempt" indicates that County procurement requirements do not apply. All nine were associated with the code 999007 and the description "Collective Bargaining (Arbitrators, Mediators, Factfinders)." It was clear from the invoices we received that these were for part of the same services that were provided under the contract with the LLC.

The collective bargaining exemption is listed as authorized by County Code §11B-4(a)(4). In this section, the exemption is for "obtaining the services of an impasse neutral, mediator, or fact finder under a County collective bargaining law under procedures approved by the Chief Administrative Officer."

The code 999007 was handwritten with the words "commodity code" on four of the consultant's invoices,[15] along with the signature or initial of an OHR employee who was the lead for Administrative Services in OHR. We are not aware of how the code became associated with the other invoices.

The invoices, which were detailed, contained descriptions of the contractor's services that made no reference to collective bargaining, arbitration, or mediation: three invoices contained descriptions of the work the contractor did on the Candidate Qualification analysis and implementation, and the fourth described work on assessment development and business process development. The Controller agreed that the Collective Bargaining exemption was incorrectly used on these OHR invoices.

[15] None of the four invoices we found with handwritten commodity codes for exempt transactions contained purchase order numbers or contract numbers.

Exemptions

The misuse of exempt codes can be a serious problem for the County: exempt codes were misused on documents by the former Chief Operating Officer of the Department of Economic Development (DED) to embezzle over 6 million dollars from the County between 2010 and 2016.[16]

Administrative Services within OHR provides management and oversight of OHR's procurement of goods and services and approves invoices. Before working for OHR, the OHR Administrative Services Lead worked for DED with the title "Senior Financial Specialist.". We conclude based on the Administrative Services Lead's experience that the Administrative Services Lead understood the procurement, invoice, and exemption processes.

One of OHR's responsibilities is to assist in the implementation of County laws regarding personnel, and it does not instill confidence in OHR when the head of OHR appears to violate other County laws.

As stated above, the Office of Procurement did not review these procurements other than the fourth contract. That office would normally not have seen the contracts or payments made under the former OHR Director's direct purchase authority.

A Using Department should not be able to unilaterally declare an exemption without having the Office of Procurement review the initial transaction (e.g. contract, purchase or MOU) and how it is coded. This would better protect the County against fraud, waste, and abuse.

As an auditor retained by the Office of the County Attorney noted in its November 16, 2018 *Report of Forensic Investigation of Transactions Related to the Montgomery County Department of Economic Development*, "While a lack of support documentation, especially [for transactions] coded as Exempt Transactions, was not against County policy during the relevant period and was not a policy failure, it is considered an area of increased risk for potential abuse."

The avoidance of Procurement and fraudulent uses of exempt codes have been used to embezzle money from the County and to obtain services from a favored vendor, known to the Department Director, that may not be in the best interests of the County.

Recommendation 4

We recommend that the Office of Procurement be tasked with making the initial determination regarding whether purchases are appropriately exempt from procurement and whether the correct exempt codes are used.

[16] The invoices used to direct County payments to the DED Chief Operating Officer's LLC were coded with the commodity code for rent/leases. The County developed new policies and procedures dated April 1, 2018, but we have not seen evidence that they have been fully implemented, and neither their implementation nor their effectiveness has been reviewed by the OIG.

Finding 5: The Department of Finance did not examine payments coded exempt.

As discussed above, the Department of Finance did not review these procurements at the time they were made, because County policies did not require this at that time, but after we requested information from the Controller regarding these procurements, he applied a new compliance process in December 2018 that he was already planning to implement in February 2019. The compliance process indicated that there was an appearance of split procurements.

In December of 2018, the Controller's office did not examine the payments marked as "exempt" when looking for possible split transactions. Because of this, we believe the analysis could have missed additional split transactions.

The Controller informed us that the Department of Finance performs two kinds of split transactions analyses: (1) to determine if Procurement rules were violated, and (2) to determine if the Direct Purchase Order rules were violated. The new Accounts Payable policies state that a Direct Purchase Order is normally for the informal procurement of goods or services by a Department for up to $10,000 and that purchases should not be split to bypass the Purchase Order process and qualify for Direct Purchase Order use.

One could argue that if a transaction is correctly exempt from procurement regulations, splitting the transaction would not necessarily matter. However, a transaction could be intentionally or unintentionally coded using an exempt transaction code to escape detection. This may have happened in this case, where it is clear that an exempt transaction code was used for payments that had nothing to do with the exemption that was identified by the code, as explained in the previous section.

After we discussed this concern with the Controller, he emailed us that the split transaction analysis would be revised so that exempt transactions would no longer be excluded from the analysis of whether transactions were split to avoid the Department of Finance's requirements regarding the Direct Purchase Order policy.

Recommendation 5

We recommend that the Department of Finance include payments that are coded exempt in all of its split transactions monitoring procedures.

Personnel Regulations

Finding 6: Regulations do not address certain personnel decisions within OHR.

Legal Requirements

County regulations require that Department Directors receive approval from the Director of OHR before making certain personnel decisions within their departments, but the Director of OHR is not required to obtain approval for the same decisions regarding OHR personnel.

For example, County regulations state that Department Directors may not set starting salaries above the midpoint of the pay range without the approval of the Director of Human Resources.[17] Department Directors may recommend an increase in salary above 10% for an employee being promoted, but the Director of Human Resources has the authority to approve it or not.[18]

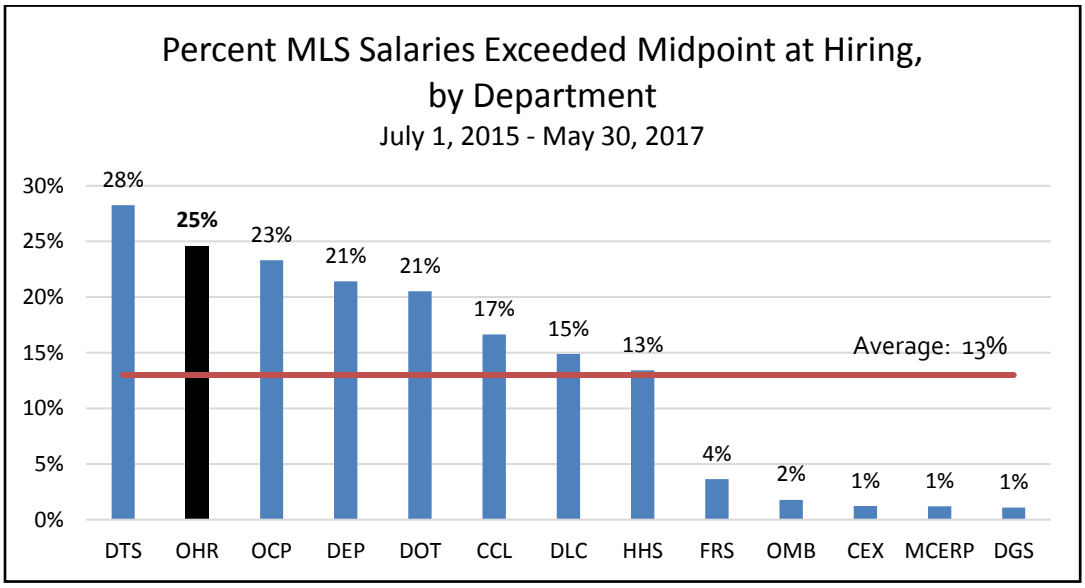
It does not instill confidence in OHR when OHR is not required to adhere to regulations that OHR enforces for every other department.

OHR's Starting Salaries Above the Midpoint

We analyzed County government hiring data for July 1, 2015 through May 30, 2017. Only 13% of all County positions in this timeframe were filled at salaries above the midpoints of the pay ranges, but 64% of the County's salaries for Management Leadership Service (MLS) hires were above the midpoints. In this timeframe, OHR provided two-thirds of its MLS hires above-midpoint salaries. This is very close to the Countywide percentage.

However, OHR was the 2nd highest out of 13 departments and non-departmental accounts in the percentage by which it exceeded MLS midpoint salaries, as can be seen in the following chart.

[17] COMCOR §33.07.01.10-5(b).
[18] COMCOR §33.07.01.10-5(c)(1).



OHR's above-midpoint MLS new hires' salaries were on average 25% above the midpoint, almost twice as high as the County average of 13%. A list of Departments and abbreviations used in this memorandum is in Appendix C. Departments not shown in the preceding chart did not have MLS above-midpoint hires in the time period examined.

When comparing salaries for all hires above midpoint (not just MLS hires above midpoint) during the same time period, the data showed that salaries for OHR's hires above midpoint also exceeded the midpoint by significantly more than did the salaries in most other departments.

The former OHR Director requested approval of the salaries of two of the new MLS employees from an Assistant Chief Administrative Officer (ACAO). This was appropriate, although not required by law or documented procedure.

However, documentation of the requests indicates that although the ACAO approved the salaries, the former OHR Director did not provide the ACAO with information that County regulations require other Department Directors to provide, such as the candidate's resume and the salaries of incumbents in the same class in that department, for consideration of pay equity.

On December 21, 2018, after a discussion of a draft of this report with Executive Branch management, an Assistant CAO instituted a new policy related to ACAO approval of above midpoint salaries for newly hired OHR employees. The Assistant ACAO asked the Acting Director of Human Resources to formalize this policy "at the next opportunity to revise and update the Personnel Regulations."

However, we reviewed proposed Executive Regulations in the Montgomery County Register, and such changes to the regulations had not been proposed as of June 1, 2019.

Position Reclassifications

County regulations give the OHR Director the ability to reclassify a position if a study indicates a significant change in the type of work performed, the difficulty and complexity of duties, the level of responsibility, or the knowledge, skills, and abilities required.[19] The Director of a Department other than OHR may ask the OHR Director to approve a reclassification but County regulations do not give these department directors the authority to reclassify a position.[20]

County regulations require the approval of the Chief Administrative Officer for a reclassification requested between July 1 and December 31 of a year in which the County Executive was elected.

The OHR Administrative Services Lead's position was reclassified upward from Manager III to Manager II at the end of 2018, while the former Director was still at OHR.

In this case, the former OHR Director could have approved the reclassification of the Administrative Services Lead's position without the need for any other person's approval, except for the fact that this reclassification was requested between July 1 and December 31 of a year in which the County Executive was elected. The ACAO apparently approved the reclassification, since the ACAO was informed of it and responded positively.

In light of the ACAO approvals and the former OHR Director's authority, we did not conclude that there were any specific violations by the former OHR Director, but we do recommend improvement of the process.

Recommendation 6

We recommend that (a) the personnel regulations be amended so that the Director of OHR does not have any greater authority over personnel matters within OHR than other Department Directors have over personnel matters within their departments. Where the OHR Director is the approval authority for a decision by another Department Director, an Assistant CAO or another high-level official should be identified in County personnel regulations as the approval authority for decisions by the OHR Director. We also recommend that (b) the OHR Director be required to include the same information that other Directors are required to include in their requests.

[19] COMCOR §33.07.01.9-4(f).
[20] COMCOR §33.07.01.9-4(b), (f).

Other Matter for Consideration

Federal Government agencies are required to publish notices of intent to award sole source contracts, with certain exceptions. The District of Columbia also posts notices of intent to award sole source contracts.

Montgomery County does not require the publication of notices of intent to award sole source contracts.[21]

When such a notice is published, other vendors are provided the opportunity to challenge the agency's intent to procure without full and open competition. Potential vendors may provide a response to a notice if they believe that an intended sole source award is not justified, and they can provide what an agency seeks to procure.

Before the award of a sole source contract, federal government agencies provide 15 days' notice, and the District of Columbia provides 10 days' notice. Both of these time periods are longer than the County's five business day requirement for publication of informal procurements.

The Federal Acquisition Regulation, used by executive agencies of the Federal Government in acquiring goods and services, states regarding the notice of intent that "the primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities."

Publishing notices of intent to award sole source contracts would be consistent with Montgomery County's interest in helping small businesses. It would also promote fairness and help the County benefit from competition.

We believe it would benefit the County and potential vendors if County law were amended to require

a) the posting of a notice of intent to award a sole source contract for a minimum of 10 days, and
b) the posting of an informal solicitation for a minimum of 10 days

.

[21] The County does require publication of some other types of procurements.

Summary of the Chief Administrative Officer's Response

Our findings described specific weaknesses, and our recommendations identified appropriate remedial actions. In response to several recommendations, the Chief Administrative Officer (CAO) described processes he indicated had been recently implemented that would address those recommendations. If the CAO ensures that these processes are implemented and function as described, these should satisfy our recommendations.

The CAO stated, in response to our Recommendation 3, that the April 2018 Authorized Payment Policy (APP) requires Direct Purchase Orders for acquisition transactions not subject to the County's procurement law and regulations, including "acquisitions both above and below $10,000." As we stated in the discussion of that recommendation, there are exceptions to the APP. Furthermore, the exemptions list uses the term "Not Subject to Procurement" as a separate category from exemptions stated in the law, so the statement by the CAO could have a narrower meaning than is apparent. We suggest that the CAO and the Department of Finance revisit the APP to ensure that the APP adequately describes the intended process.

The response from the Chief Administrative Officer to the final draft report is included in its entirety in Appendix A.

Appendix A: Chief Administrative Officer's Response

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Andrew W. Kleine
Chief Administrative Officer

July 10, 2019

MEMORANDUM

TO: Edward L. Blansitt
Inspector General

FROM: Andrew W. Kleine
Chief Administrative Officer

SUBJECT: Inspector General Report # OIG-19-00x – *Accounting, Procurement, and Personnel Internal Controls Failed to Detect Problems in the Office of Human Resources (OHR)*

Thank you for the opportunity to respond to the recommendations in your June 18, 2019, final draft report (Draft) entitled *Accounting, Procurement, and Personnel Internal Controls Failed to Detect Problems in the Office of Human Resources (OHR)*. Following are the responses to the Draft's recommendations.

Finding 1: A contractor had input into the writing of a solicitation.

Recommendation 1: We recommend that (a) County Code Chapter 11B. Contracts and Procurement Sec. 11B-52 Ethics; Contractor conduct be amended (i) to clarify what conduct is prohibited, and (ii) to require that any waivers by the Chief Administrative Officer be supported by findings and substantial evidence, and that (b) the County should apply administrative consequences for managers and staff who violate Section 11B-19 Specifications or lead a contractor to violate Sec. 11B-52.

***CAO Response*: With respect to part (a)(i) of the recommendation, we believe that Section 11B-52 is sufficiently clear as written and that each prohibited type of conduct as set forth in subsections (a) – (c) of that section is readily understandable. On the face of the facts as presented in the report, it appears that the type of conduct identified in subsection (b)(2) is at issue; e.g., a contractor who provides an analysis or recommendation to the County on a certain matter may not seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County. Notwithstanding the plain language of the provision, the Office of the County Attorney (OCA) addressed the specific type of conduct at issue, albeit in regard to this provision's applicability to subcontractors on County contracts, in its September 8, 1998, Opinion; which is referenced in the report. Given the plain language of the Code provision in general, as well as the discussion set forth in the 1998 Opinion, we see no need to provide further clarification by way of amendment.**

With respect to part (a)(ii) of the recommendation, which advocates for amendment of Section 11B-52 to require that the Chief Administrative Officer (CAO), when "waiving" any action under subsections (b) or (c), support such a "waiver" by findings and substantial evidence. Section 11B-52(d) provides that: "[i]f, the Chief Administrative Officer, after finding that the action would not impair the public interest, consents to any action under subsections (b) or (c), the Chief Administrative Officer must promptly notify the Ethics Commission." We note that this provision refers to the CAO's "consent" to certain actions, not a "waiver." There is no specific mention of a CAO waiver of certain conduct in this section.

While the referenced section contains no express requirement for the CAO to provide any specific justification for providing such consent as part of the notification to the Ethics Commission, such a requirement is implied and has been treated as such by the CAO's office. It is standard practice for the CAO to require documentation of the justification for the consent to the specific action to be provided by a Using Department. Based upon the Using Department's request, and any other information deemed necessary, the CAO will then make a finding as to whether or not the action would impair the public interest. Should the CAO determine that there is no impairment to the public interest, and thus provide consent to the action, the CAO will report the consent to the Ethics Commission in the form of a memorandum outlining the findings and the reasons therefore. Given the implied requirements of 11B-52(d), and the CAO office's standard procedure when considering and reporting on such consent, we view the addition of the suggested language to the law to be unnecessary.

With respect to part (b) of the recommendation, administrative consequences are presently permitted by, and set forth in, the County's Personnel Regulations in regard to violations of County law by County employees. It is County practice to enforce the law, as appropriate, commensurate with the violation, as committed.

Finding 2: Records are in conflict regarding whether OHR posted the solicitation for the required number of days.

Recommendation 2 - We recommend that the Office of Procurement (a) maintain records of actual posting dates and (b) not approve contracts with contractors not registered to do business in Maryland.

***CAO Response*:** With respect to part (a) of the recommendation, based on its records, the Office of Procurement (Procurement) was able to confirm that Informal Solicitation #1059794 was posted on 10/26/15 and opened on 11/2/15. Therefore, the Informal Solicitation was posted for the required 5 business days. Procurement already maintains records of actual posting dates through its internal Procurement system. Furthermore, once a posting has occurred, an e-notice is issued to the Using Department to notify them of the posting.

With respect to part (b) of the recommendation, the State Department of Assessments and Taxation (SDAT) standing of a business is part of the responsibility check performed by the

Using Department and is also checked by OCA. If the Using Department proposes to enter into a contract with a business not registered in the State, OCA requires the Using Department to justify such a request; which OCA considers and will make a final decision on.

While the requirement on the Using Department to determine a business' standing in SDAT is covered as part of the Contract Administrator training, we concur that this is a vital step and should be prominent. Procurement will update its departmental checklists for its various procurement methods to include SDAT verification.

Finding 3: The absence of either a contract number or a purchase order number had the effect of allowing OHR to split a contract for a single purpose into four contracts and seven additional purchases totaling $184,900, thus bypassing the formal competition requirement.

Recommendation 3 - We recommend that the Department of Finance ensure that (a) the accounting system contains contract or purchase order numbers for every invoice, even for exempt procurements and purchases of $10,000 or less, and that (b) contracts can be clearly and simply matched to all related payments, using a computer match.

***CAO Response*:** We concur with the intent of this recommendation and believe the changes we have made in County policies and processes address the recommendation, as discussed below. With respect to procurement contracts and related purchase orders (PO) for transactions that are subject to the County's procurement law and regulations, Procurement controls the issuance of PO and ensures that POs are issued in accordance with the underlying contract. When an invoice is received pursuant to a procurement contract, the invoice is matched against a receiving report and related PO. As part of that invoice creation and matching process, the invoice is therefore linked to the PO number. If the invoice does not match the terms on the PO, it is rejected. Using Departments are responsible for ensuring goods and services were received and performed in accordance with the contract underlying the PO.

Finance's Authorized Payment Policy (APP), issued in October 2017 with an April 2018 effective date for departments, requires Direct Purchase Orders (DPO) for acquisition transactions not subject to the County's procurement law and regulations. This includes acquisitions both above and below $10,000. Similar to the process outlined for POs above, when an invoice is received pursuant to a DPO, the invoice is matched against a receiving report and related DPO. As part of that invoice creation and matching process, the invoice is therefore linked to the DPO number. Finance's Direct Purchase Order Workflow Policy requires non-procurement acquisitions above $10,000 be supported by agreement, contract, or other such formal documentation. Further, the County's Interim Administrative Procedure 2-4 (AP 2-4) requires an agreement for all transactions subject to the AP. Finance's compliance monitoring unit reviews each DPO over $10,000 to ensure the DPO is consistent with the terms of the underlying contract, agreement, etc.

Finance monitors payment requests for transactions under $10,000 to ensure they comply with the APP. If a transaction below $10,000 relates to an acquisition, a payment request must be matched against a DPO, as noted above. Further, Finance performs periodic audits at departments to ensure that transactions under $10,000 have been properly supported by appropriate documentation.

Finding 4: OHR misused the collective bargaining exemption.

Recommendation 4 - We recommend that the Office of Procurement be tasked with making the initial determination regarding whether purchases are appropriately exempt from procurement and whether the correct exempt codes are used.

***CAO Response*:** With the issuance (September 11, 2018) of AP 2-4, the County has mandated a policy whereby departments seeking to engage in purchases that a department believes to be exempt from procurement must consult with, as appropriate, Procurement, OCA, and the Department of Finance (Finance). As such, absent confirmation that the subject transaction at issue is exempt and was properly entered into in accordance with the AP, it is highly unlikely that the such a purchase will be consummated.

In addition, Finance began reviewing proper support for exemption codes for direct payment requests as part of compliance monitoring of its APP referenced above. This policy was issued in October 2017 with an April 2018 effective date for departments. Further, in February 2019, Finance assigned dedicated resources as part of its newly created financial compliance monitoring unit, to monitor DPOs above $10,000 for proper support including support for the department's determination that a transaction is exempt from the County's procurement law and regulations. If after follow-up, Finance still believes the transaction lacks support for exemption, the compliance monitoring unit will refer the matter to Procurement for final determination. Finance's Accounts Payable section reviews invoice packets sent to it from departments that have been coded with an exempt commodity code to ensure proper usage of the exempt code. Finance's compliance monitoring unit also performs periodic audits of exempt transactions, as noted in response to Recommendation #3, to ensure appropriateness.

Finding 5: The Department of Finance did not examine payments coded exempt.

Recommendation 5 - We recommend that the Department of Finance include payments that are coded exempt in all of its split transactions monitoring procedures.

***CAO Response*:** We concur with this recommendation, and had previously taken steps to implement it. Finance includes in its split transaction monitoring payments that have been coded exempt.

Finding 6: Regulations do not address certain personnel decisions within OHR.

Recommendation 6 - We recommend that (a) the personnel regulations be amended so that the Director of OHR does not have any greater authority over personnel matters within OHR than other Department Directors have over personnel matters within their departments. Where the OHR Director is the approval authority for a decision by another Department Director, an Assistant CAO or another high-level official should be identified in County personnel regulations as the approval authority for decisions by the OHR Director. We also recommend that (b) the OHR Director be required to include the same information that other Directors are required to include in their requests.

***CAO Response*:** We concur with this recommendation. As noted in the report, a requirement was established on December 21, 2018, to ensure that OHR follows a process for requesting and approving requests for appointment of a candidate to a position in OHR at a salary above the midpoint of the salary range, that is comparable to the process the County Personnel Regulations require for other departments. Specifically, if the OHR Director is proposing to appoint a candidate to a position in OHR at a salary that is above the midpoint of the salary range or pay band, the OHR Director must submit the request via a memorandum to the Deputy CAO, with the same supporting information required under Section 10-5(b)(2) and with OHR's analysis of the factors identified in subsections (b)(3) through (b)(8) of Section 10-5. The Deputy CAO will approve or deny the OHR Director's request. This requirement will be included in the next overall update to the Personnel Regulations, which is planned for later this fiscal year.

Thank you again for the opportunity to respond to the Draft's recommendations. If you have questions, please contact Fariba Kassiri, Deputy Chief Administrative Officer, at 240-777-2512 or Fariba.Kassiri@mongtomerycountymd.gov.

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Karen Plucinski, Acting Director, Office of Human Resources
Michael Coveyou, Acting Director, Department of Finance
Ash Shetty, Director, Office of Procurement
Bill Broglie, Internal Audit Manager

Appendix B: Objectives, Scope, and Methodology

The objective of our inquiry was to determine if the Office of Human Resources followed applicable laws and policies related to allegations we received about the hiring and dismissal of employees and contracts with a consultant. If any laws, rules, or regulations were violated, it was not our intent to identify within this document the individual(s) who was/were responsible.

We interviewed County employees and researched laws and policies.

Regarding the hiring and dismissal of employees, we determined that certain allegations we received were under the jurisdiction of the Merit System Protection Board, and there were some allegations we did not substantiate.

During our review of the consultant's contracts, we noticed possible procurement and payment irregularities, so we requested payment data and an analysis of possible split contracts from the Department of Finance and reviewed those, and we reviewed emails sent by the former Director of OHR and a high-level staff member.

We conducted this inspection in accordance with *Government Auditing Standards* issued by the U.S. Government Accountability Office, and *Principles and Standards for Offices of Inspector General* issued by the Association of Inspectors General.

Appendix C: Department Names and Abbreviations

CCL	County Council
CEX	County Executive
DEP	Department of Environmental Protection
DGS	Department of General Services
DLC	Department of Liquor Control
DOT	Department of Transportation
DTS	Department of Technology Services
FRS	Fire and Rescue Service
HHS	Health and Human Services
MCERP	Montgomery County Employee Retirement Plans
OCP	Office of Consumer Protection
OHR	Office of Human Resources
OMB	Office of Management and Budget

Sources: Data Montgomery, Employee Retirement Plans

Appendix D: Timing of Payments

The following chart shows the timing and running totals for the payments to the individual contractor:

Payments to the Individual Contractor

Date	Invoices	Amount	Running Totals
5/22/15	1st Contract for $10,000		
6/22/15	Invoice - Contractor	$8,400	$8,400
7/22/15	Invoice - Contractor	$1,600	$10,000
7/22/15	Invoice - Contractor	$8,800	**$18,800**
7/24/15	2nd Contract for $10,000		
8/13/15	Invoice - Contractor	$1,200	$20,000
8/13/15	Invoice - Contractor	$800	**$20,800**
9/16/15	3rd Contract for $10,000		
9/30/15	Invoice - Contractor	$5,400	$26,200
10/28/15	Invoice - Contractor	$3,800	$30,000
12/1/15	Invoice - Contractor	$12,800	**$42,800**
2/1/17	Invoice - LLC	$9,800	**$52,600**

Before the second contract was made, payments to the individual contractor should not have exceeded $10,000, but they did by $8,800.

Before the third contract was made, total payments should not have exceeded $20,000, which is the sum of two contracts with limits of $10,000 each, but they did by $800.

Total payments to the individual contractor should not have exceeded $30,000, which is the sum of three contracts with limits of $10,000 each, but they did by $22,600. On February 1, 2017, a payment went to the individual contractor, not the LLC, as noted in the body of the report.

The following chart shows the timing and running totals for the payments to the LLC:

Payments to the LLC

Date	Invoices	Amount	Running Totals
12/14/15	4th Contract - LLC for $99,999.99 Contract # 1059794		
1/8/16	Invoice - LLC	$8,600	$8,600
1/28/16	Invoice - LLC	$8,400	$17,000
3/1/16	Invoice - LLC	$9,800	$26,800
3/23/16	Invoice - LLC	$9,200	$36,000
4/29/16	Invoice - LLC	$8,000	$44,000
5/31/16	Invoice - LLC	$6,000	$50,000
5/31/16	Invoice - LLC	$2,500	$52,500
6/30/16	Invoice - LLC	$7,500	$60,000
6/30/16	Invoice - LLC	$2,300	$62,300
8/1/16	Invoice - LLC	$8,000	$70,300
9/1/16	Invoice - LLC	$9,200	$79,500
9/30/16	Invoice - LLC	$9,000	$88,500
10/31/16	Invoice - LLC	$10,100	$98,600
11/30/16	Invoice - LLC	$3,699.99	**$102,299.99**
11/30/16	Invoice - LLC	$5,500.01	**$107,800**
1/4/17	Invoice - LLC	$8,700	**$116,500**
3/16/17	Invoice - LLC	$10,000	**$126,300**
3/21/17	Invoice - LLC	$5,800	**$132,300**

Payments to the LLC totalling $132,200 exceeded the $99,999.99 contract limit by $32,300.01.

If you are aware of fraud or misconduct in County government activities, contact the County Inspector General

Montgomery County, Maryland
INSPECTOR GENERAL
County Government Accountability

Confidential OIG Hotline: 240 777 7644

ig@montgomerycountymd.gov

Edward L. Blansitt III
Inspector General

51 Monroe Street, Suite 802
Rockville, Maryland 20850
240 777 8240
montgomerycountymd.gov/oig