



OFFICE OF THE INSPECTOR GENERAL MONTGOMERY COUNTY MARYLAND

MEGAN DAVEY LIMARZI, ESQ.
INSPECTOR GENERAL

Compliance Review of Bridge Contracting

Office of Procurement

OIG Publication # OIG-21-014

JUNE 17, 2021

EXECUTIVE SUMMARY

Why We Did This Review

In a Fiscal Year 2019 review, *Memorandum of Understanding Regarding the School Bus Safety Camera Program*, the Office of the Inspector General (OIG) noted issues with a bridge contract entered into by Montgomery County Public Schools (MCPS) for the provision of a school bus safety camera program. The OIG observed that MCPS appeared to receive less favorable terms than the public entity in the underlying contract. As a result, the OIG added a review of the County's use of bridge contracts to its November 2019 to June 2021 Work Plan.

We conducted this review to examine whether bridge contracts executed by the County met the requirements established by law.

What We Found

- Procurement was not always able to provide satisfactory assurance that consideration was given to whether underlying contracts were awarded as a result of adequate competition.

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BACKGROUND

Montgomery County procurement law allows the County to rely on another public entity's competitive procurement process to satisfy contract competition requirements. These arrangements arguably allow the County to save the administrative time and expense of independently competing a contract while still realizing the benefits of a competitive procurement process. Contracts awarded through these arrangements are referred to as "bridge contracts"¹ or "piggyback contracts."

Section 11B-42 of the County Code permits the County to utilize bridge contracts if the Director of Procurement determines that:

- 1) the person/vendor has an existing contract with another public entity for the goods, services, or construction that the County would like to procure;
- 2) it is in the best interest of the County;
- 3) the contract between the person/vendor and the other public entity was awarded as the result of adequate competition; and
- 4) the person/vendor agrees to provide the County materially the same specifications and the same prices being provided to the other public entity.

Between July 1, 2018, and October 29, 2020 the County's Office of Procurement (Procurement) awarded 93 contracts bridged from contracts originating in 40 different public entities and amounting to over \$43 million.² Bridge contracts represented 6.3% of total County contracting in Fiscal Year 2019. That figure is consistent with FY17 (6.2%) and FY18 (7%) totals.

Figure 1 displays the number of bridge contracts awarded from July 1, 2018 to October 29, 2020, with corresponding values and associated County departments. The data shows that the Department of Health and Human Services spent more through bridge contracts than other County departments, and the Department of General Services issued the greatest number of bridge contracts. The County spent the most on contracts bridged from the State of Minnesota (\$12,794,650) and Arlington County, VA (\$10,160,953).

¹ County Code § 11B-42.

² This is the sum of the purchase orders under the contract.

BACKGROUND

Figure 1: Bridge Contracts by Department 7-1-18 through 10-29-20

Department	# of Bridge Contracts	PO Encumbrance \$
Health & Human Services	8	\$15,225,898
Police	10	\$10,535,872
Correction & Rehabilitation	10	\$7,380,263
General Services	27	\$5,430,344
Environmental Protection	15	\$1,817,424
Transportation	5	\$1,434,034
Fire & Rescue Services	8	\$572,867
Recreation	5	\$456,134
Board of Elections	2	\$140,284
Office of Animal Services	1	\$110,800
Technology Services	1	\$24,000
Office of Human Resources	1	\$21,340
Total	93	\$43,149,260

Source: Data provided by Procurement and OIG calculations

In a 2015 report, the Montgomery County Minority Owned and Local Small Business Task Force cited concerns that bridge contracts were being utilized to “get around” minority, female, and disabled-owned (MFD) requirements³ established by the Chief Administrative Officer as prescribed in County Code § 11B-60(a).⁴ The report also stated that the use of bridge contracts may result in the County making fewer procurements from local or minority-owned businesses. The Task Force recommended that the County employ more effort to utilize local small and MFD businesses in lieu of bridge contracts.

³ Minority Owned and Local Small Business Task Force 2015 report, page 13.

⁴ County Code § 11B-59(c) allows bridge contracts to be exempted from these goals. County Code § 11B-66(c) exempts bridge contracts from having to meet the County’s Local Small Business Reserve Program (LSBRP) goals.

Objectives, Scope, and Methodology

The objectives of this review were to:

- 1) determine if bridge contracts complied with County policies, procedures, and legal requirements, including whether the County contract had materially the same specifications and prices as the contract it bridged; and
- 2) determine whether the contracts the County bridged from were awarded as the result of adequate competition.

Our scope included all County bridge contracts executed between July 1, 2018 and October 29, 2020. We found that the County issued 93 bridge contracts during this period, amounting to \$43,149,260.

We tested a random sample of 23 contracts which provided a 90% confidence interval. We reviewed the 23 County contracts, the underlying public entity contracts, and Procurement's records to assess compliance with the requirements for bridge contracts as enumerated in County Code §11B-42 and MFD requirements in County Code § 11B-59 and § 11B-60.

Our review was conducted between October 2020 and April 2021 in accordance with the Association of Inspectors General's *Principles and Standards for Offices of Inspector General* (2014).

FINDINGS AND RECOMMENDATIONS

Our review found that, for our sample, the County generally complied with laws and policies governing bridge contracts. We determined that exemptions from MFD goals were in writing, as required, for the 23 contracts we reviewed. However, we observed that Procurement did not have support showing that two of the sampled bridge contracts (9%) were awarded as a result of adequate competition; one contract (4%) did not have the same price as the contract being bridged; and three (13%) contracts appeared to contain broader specifications than those in the bridged contract.

In reviewing MFD participation in bridge contracts, we noted that though two contract awardees were listed on the originating public entities' equivalent of a MFD vendor list, none of the contract awardees in either our testing sample or the 93 bridge contracts in our scope appeared on the County's list of registered MFD vendors. We also noted that contract awardees received waivers from meeting subcontractor MFD requirements in 78% of the 23 bridge contracts we sampled. We observed that most of the waivers were for manufacturers of specific products or vendors with in-house capacity to provide services.

Our analysis revealed that in FY19 approximately 84% of bridge contract expenditures received full waivers from MFD subcontracting requirements. In contrast, only approximately 5% of the County's overall contract expenditures in FY19 received waivers from MFD requirements. Our observation does not impart a finding that bridge contracts are being used to avoid MFD requirements. Rather we note that although the County regularly reports meeting its annual MFD goals, the use of bridge contracts may result in fewer expenditures to County-registered MFD firms.

Compliance with Laws and Policy

We reviewed our sample of bridge contracts to determine if: the prices in the bridge contracts and underlying contracts were the same; the specifications were materially the same; the underlying contract was awarded as the result of adequate competition; and approvals of exemptions from MFD goals and waivers of MFD subcontracting requirements were documented.

Several observed anomalies within our sample were interpreted by the Office of the County Attorney (County Attorney) to still be compliant with the law, though ambiguous in current guidance. For example, one contract contained a lower price than the bridged contract and therefore did not comply with the requirement for a "same price." In discussions with Procurement and County Attorney staff, we were told that because obtaining lower prices is in the interest of the County and the spirit of the law, it did not violate the requirement to obtain the same prices as the contract that was bridged. Office of the County Attorney staff stated that there is no written guidance explaining this interpretation. This appears inconsistent with

Procurement's requirement that using departments provide a statement asserting that the prices are the same as the underlying contract. This lack of guidance may lead to the County missing opportunities for lower prices. The County should consider advising departments that they have some flexibility in negotiating pricing.

We also observed that three of the contracts reviewed contained broad specifications that seemed to allow using departments to obtain services that were not materially the same as the underlying contract. These contracts included the statement "services may include, but are not limited to, all services required through the [other public entity] Contract." County Attorney and Procurement staff advised us that the underlying contracts were similarly very broad, and the County only obtained services included in the underlying contract. Additionally, County Attorney staff stated that this language is "somewhat less-than-ideally worded" and currently not being used in bridge contracts.

Finding: Procurement was not always able to provide satisfactory assurance that consideration was given to whether underlying contracts were awarded as a result of adequate competition.

In almost all of the contracts we reviewed, the underlying contracts referred to a competitive procurement process, such as an invitation for bids or request for proposals, which was completed by the originating public entity. However, for two bridge contracts (9%) in our sample, neither the underlying public entity contracts, nor the County's file contained evidence that Procurement checked for competition at the time of the County procurement. The two underlying contracts were with the same public entity. Procurement staff explained they viewed the solicitations on the other public entity's website during the County's contracting process but did not retain copies in the contracting files. The other public entity's website was redesigned during our review and therefore Procurement could not access the underlying solicitations.

Procurement provided us with a presentation by the other public entity which indicated it utilized a competitive process for this type of purchase; however, the presentation was generic and did not refer to any specific contract. Procurement asserted that they checked that all requirements were met before the County contract was awarded. However, Procurement's records did not indicate that competition, or any of the other bridge contract requirements in Section 11B-42, were considered for the two contracts we identified. Though we agree with Procurement's contention that the law does not specifically require that they maintain documentation showing they considered legal requirements while evaluating prospective bridge contracts, maintaining such records can serve as an internal and external control, and provide confidence that all requirements have been met.

Recommendation

Ensure sufficient evidence is maintained to show that the County considered whether underlying contracts were awarded as a result of adequate competition.

OIG COMMENTS TO CHIEF ADMINISTRATIVE OFFICER RESPONSE

The County Chief Administrative Officer's response to our report is included in its entirety in Appendix A. The response notes concurrence with the OIG's recommendation.

We expect specific details related to the County's actions and plans to implement our recommendation to be included in the Internal Auditor's fiscal year 2021 annual report which, in accordance with County Code §2-25A, is due this fall.

APPENDIX A: Chief Administrative Officer Response



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

June 14, 2021

TO: Megan Davey Limarzi, Inspector General

FROM: Richard S. Madaleno, Chief Administrative Officer *RSM*

SUBJECT: Inspector General Confidential Draft Report OIG Publication OIG-21-012; *Compliance Review of Bridge Contracting*

Thank you for the opportunity to respond to the issues identified in the draft report. As briefly noted in the report and at the exit conference for this review, overall, the County and the Office of Procurement are doing a good job in administering bridge contracts. Notably, the review did not identify any issues of failure to comply with regulations or policies. The one recommendation contained in the report is designed to promote improved documentation of competition in our procurement files. We concur with this recommendation and will ensure the Office of Procurement takes appropriate steps to enhance its current rigorous documentation practices.

The County is committed to continuing its proper use of bridge contracts in a judicious manner. In addition, we will adhere to our core principles of promoting and fostering adequate and fair competition in the awarding of County contracts including with minority, female and disabled-owned (MFD) businesses. We are proud that our MFD performance has been in the 22-24% range over the last two years, which exceeds the average MFD goals.

We appreciate you conducting this review and helping us to ensure that we have even stronger controls in place.

cc: Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Ash Shetty, Director, Office of Procurement
Bill Broglie, Internal Audit Manager, Office of the County Executive

101 Monroe Street • Rockville, Maryland 20850
240-777-2500 • 240-777-2544 TTY • 240-777-2518 FAX
www.montgomerycountymd.gov