



OFFICE OF THE INSPECTOR GENERAL MONTGOMERY COUNTY MARYLAND

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INSPECTOR GENERAL

County Usage of Field Orders

OIG Publication # 25-06

February 3, 2025

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EXECUTIVE SUMMARY

The County's \$5.7 billion Capital Improvements Program (CIP) funds construction and renovation of County facilities and infrastructure. In limited circumstances, departments administering construction contracts may access contingency funds through the use of field orders. A field order is a limited and specific written directive modifying the scope of work outlined in a previously approved contract. Field orders carry a heightened risk for possible fraud, waste, or abuse because they are not subject to the same requirements as other contract modifications and are usually issued and approved entirely within the using department. During this review, we analyzed a sample of field orders used in construction contracts active in fiscal years 2023 and 2024 at the Department of Environmental Protection (DEP), Department of Transportation (DOT) and Department of General Services (DGS). We found each department used a different process to issue a field order and each process was deficient in demonstrating that the use of a field order was justified and complied with County regulations.

RESULTS

- The County has no formal written policy pertaining to field orders, leading to inconsistent practices amongst departments.
- Field orders were approved and issued without evidence of first having met the required conditions outlined in the procurement regulations.

RECOMMENDATIONS

We recommend the County:

- Implement a universal policy governing the use of field orders, and a process that ensures compliance.
- Develop a process that ensures field orders are issued in compliance with County regulations and that evidence of such is properly documented.

OBJECTIVES

Through this review we sought to determine: (1) DOT, DEP, and DGS' compliance with applicable law regulation, and policy; (2) whether the County effectively implemented the recommendations outlined in the May 2019 Internal Audit report entitled, *Program Assessment of the Department of General Services' Use of Change Orders and Field Orders in Facility Construction Projects*; and (3) if vulnerabilities exist that create opportunities for fraud or abuse.

SCOPE AND STANDARDS

Our review was conducted between July and October 2024, in accordance with the Association of Inspectors General, *Principles and Standards for Offices of Inspector General, Quality Standards for Inspections, Evaluations, and Reviews* (July 2024).

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BACKGROUND

The County's Capital Improvements Program (CIP)¹ for fiscal years (FY) 2023-2028 includes \$5.7 billion for long-term investments in public facilities and infrastructure such as building construction and renovation, transportation projects, stormwater and environmental management, sanitation, and large technology solutions. These durable capital assets are largely funded through tax-exempt bonds, often requiring a multi-year investment of County funds.

To ensure projects have sufficient funds to cover unforeseen circumstances that may increase construction costs, the County includes contingency funds when estimating the initial cost of a CIP project. The Office of Procurement (Procurement) must typically approve a contract amendment or change order before a department may use any contingency funds. In limited circumstances where time is of the essence, departments may use a field order to access contingency funds. Field orders are not subject to any approval process outside of the using department, however, County procurement regulations state that most field orders require that the following conditions are met:²

- 1) There is insufficient time to process a change order;
- 2) Unforeseen and unanticipated conditions arise; and
- 3) Immediate action is required to mitigate costs or avoid delay claims by a contractor.

In 2019, the County's Office of Internal Audit (Internal Audit) reviewed the Department of General Services' (DGS) use of field orders in construction projects. Internal Audit made several recommendations designed to ensure that associated documentation provides sufficient justification to conclude that field orders were issued in adherence with County procurement regulations.³ The recommendations included the development of County-wide supplemental guidance governing the use of field orders as well as changes to the DGS field order policy and process.

Objectives, Scope, and Methodology

We designed our review to provide a cross-sectional assessment of the use of field orders throughout County government. Our review included CIP construction contracts active at the Department of Environmental Protection (DEP), Department of Transportation (DOT) and DGS during FY 2023 and FY 2024. During the period reviewed, departmental staff reported 39 active construction contracts, totaling over \$310 million.

Through this review we sought to determine: (1) DOT, DEP, and DGS' compliance with applicable law, regulation, and policy; (2) whether the County effectively implemented the recommendations

¹ Amended FY23-28 CIP budget, effective July 2023

² Field orders may also be used for minor changes consistent with the intent of the contract or to provide a written interpretation consistent with the contract documents.

³ Montgomery County, Maryland Office of the County Executive Office of Internal Audit, *Program Assessment of the Department of General Services' Use of Change Orders and Field Orders in Facility Construction Projects*, May 20, 2019 . See www.montgomerycountymd.gov/exec/Resources/Files/audit/ProgramAssessment_5-20-2019.pdf, last accessed November 1, 2024.

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outlined in the May 2019 Internal Audit report entitled, *Program Assessment of the Department of General Services' Use of Change Orders and Field Orders in Facility Construction Projects*; and (3) if vulnerabilities exist that create opportunities for fraud or abuse.

We requested a list of CIP construction contracts active during the reviewed period from each subject department and selected a sample of projects with field orders, including at least one assigned to each project manager (engineer).⁴ We requested each project manager to describe their training, practices, and documentation for the use of field orders and obtained copies of the electronic project files included in our sample. We evaluated the documentation included in the sample project files against the criteria outlined in County regulation, departmental policy, and the recommendations contained in the Internal Audit report. We also evaluated the sample of field orders to determine whether departmental practices presented opportunities for fraud or abuse.

Our review was conducted between July and October 2024, in accordance with the Association of Inspectors General, *Principles and Standards for Offices of Inspector General, Quality Standards for Inspections, Evaluations, and Reviews* (July 2024).

⁴ DOT was permitted to exclude "level of effort" CIP projects which did not utilize field orders.

FINDINGS AND RECOMMENDATIONS

We noted that DGS has made considerable progress towards addressing deficiencies identified in the Internal Audit report regarding DGS' process to issue field orders and related departmental policy. However, we found that efforts to implement the recommendations and lessons learned from the report to the County as a whole have not gone far enough, potentially leaving the County vulnerable to fraud or abuse.

Further, through our review of field orders issued by DGS, DEP, and DOT we observed that they each use a different process to issue field orders. These processes in large part fail to show that the use of a field order was justified and complied with County regulations.

Finding 1: The County has no formal written policy pertaining to field orders, leading to inconsistent practices amongst departments.

In response to Internal Audit's recommendation that the County develop "supplemental guidance" providing additional detail and clarity regarding the specific conditions and criteria under which a field order would be allowed, Procurement created the PMMD-194, Field Order Checklist/Department form. In February 2022, Procurement emailed employees serving as contract administrators for their respective departments and advised them to begin using the newly created PMMD-194 form when processing field orders. We note that use of the form was never formally incorporated into any County policy (including the County's *Procurement Guide*⁵) and not all departments are using the form.⁶

We found that PMMD-194 does not include detailed instructions and does not sufficiently prompt staff to describe how the use of the field order is justified and meets each of the required elements outlined in the procurement regulations. While DOT is the only department we reviewed that uses the PMMD-194 form, we observed that three of four project managers we spoke to issued a field order even though the form indicated that only one of the three required criteria was met.

Through our discussions with department staff, we learned that there was confusion among some project managers regarding the County regulations governing field order use. Multiple project managers were not able to articulate the three required elements outlined in the procurement regulations necessary prior to issuing a field order. Additionally, DOT and DEP lacked internal policy governing the use of field orders, so there was no supplemental guidance to reference outside of the PMMD-194 form. A well-developed County policy could establish consistency and a framework for issuing field orders, clarifying the regulatory guidelines and preventing improper use.

⁵ Office of Procurement, *Procurement Guide*, February 2022

⁶ The email states the PMMD-194 form must be used unless a department has developed its own similar form and obtained approval from the Office of the County Attorney. DGS obtained approval to use an alternate form. DEP does not use PMMD-194 and has not obtained approval to use another form.

Recommendation 1

We recommend the County implement a universal policy governing the use of field orders, and a process that ensures compliance.

Finding 2: Field orders were approved and issued without meeting required conditions outlined in the procurement regulations.

We reviewed a sample of 75 completed field orders and evaluated whether the documentation reflected that the field orders met the three conditions required by the County’s procurement regulations prior to issuance. We found that the documentation did not show evidence of compliance with one or more required conditions in approximately 98% of the field orders we evaluated. Figure 1 outlines the deficiencies noted by department.

Figure 1: Field Order Documentation Lacking Discussion of Required Regulatory Criteria

Department	# of Field Orders Reviewed	Missing Description of One of More Required Element	Lacks Discussion of Whether There is Sufficient Time to Process a Change Order	Does Not Describe Unforeseen Condition	Lacks Discussion of Cost Mitigation or Avoidance of Delay Claim
DOT	19	100% (19)	100% (19)	21% (4)	79% (15)
DEP	16	100% (16)	100% (16)	50% (8)	94% (15)
DGS	40	98% (39)	98% (39)	0%	0%
TOTAL	75	74	74	12	30

Almost universally, we found that documentation used to support the use of field orders was missing evidence indicating that there was insufficient time to process a change order. The regulations state that use of a field order is prohibited if there is sufficient time to process a change order, a contract amendment, or, if appropriate, a new procurement to satisfy the County's needs. Additionally, a field order issued due to an unforeseen and unanticipated condition which requires immediate action to mitigate costs or avoid delay claims is only permitted if there is insufficient time to process a change order. This concept of using a change order or other contract modification when possible is codified in the County’s regulation twice.⁷

Nevertheless, we saw several instances of field orders being used even though there appeared to be enough time to process a change order. Based on estimates provided by Procurement, DOT, DEP, and DGS, we determined that most change orders are processed in less than 90 days. However, at every department reviewed, we identified instances where field orders were issued more than 90 days after the unforeseen issue became apparent, suggesting there was time to process a change order. We also observed instances at DEP and DOT wherein a field order was

⁷ COMCOR 11B.00.01.11 Contract Modifications, Section 11.3 Field Orders and Section 11.3.3 Prohibited Field Orders

issued after the work described in the field order had been completed. We question the immediate need to issue a field order to mitigate costs or avoid delay claims for work that has already been completed. In these instances, we conclude that there was likely time to process a change order.

DOT

All DOT field orders included in our sample were used by DOT's Division of Transportation Engineering (DTE) which designs and constructs transportation systems and infrastructure. DTE staff explained that they use field orders when additional tasks not contemplated in the original project plan are needed to keep a project moving and avoid delay claims.

Although DTE prepares substantive paperwork (including PMMD-194) in support of each field order issued, DTE staff repeatedly failed to address whether there was sufficient time to process a change order in lieu of a field order. Similarly, for 79% of the field orders reviewed, the associated documentation also failed to explain if the field order was needed to mitigate costs or avoid a delay claim. This appears to be a result of a misunderstanding among DTE project managers regarding the procurement regulations. Three of the four DTE project managers we spoke to did not understand that using a field order was prohibited if there was time to process a change order. Additionally, two project managers misinterpreted the criteria and thought they only needed to satisfy one of the three conditions outlined in the procurement regulations.

DEP

All DEP field orders included in our sample were issued by the DEP Watershed Restoration Division (WRD) which manages County stormwater management construction projects. WRD staff said that they use a field order whenever they encounter an issue in the field that is not contemplated in the project design but necessitates a change in the project or additional project work. The contractor submits a request for information (RFI) describing the situation and the proposed change, along with a proposed price for the work. The project manager prepares a DEP-specific field order form to obtain approval for the additional work. The form is then reviewed by the contract administrator, and if approved, sent to the contractor to complete the work as described.

The WRD contract administrator responsible for approving all of the field orders included in our review was unaware that County procurement regulations require departments to use a change order rather than a field order if there was time to process one. As such, none of the WRD field orders reviewed included a discussion of whether there was time to process a change order. Prior to our review, the WRD contract administrator believed that change orders were for "major" changes to the scope of the project, in which the cost is more than \$100,000 or there are no longer funds available in the field order encumbrance that WRD sets aside for each project.

We also observed that the limited descriptions included on the DEP field order forms routinely lacked evidence of having met the other required conditions outlined in the procurement regulations. Half of the field orders reviewed failed to describe the unforeseen circumstance that

FINDINGS & RECOMMENDATIONS

required a field order, and only one described how the use of the field order mitigated costs or avoided project delays.

DGS

All DGS field orders included in our sample were issued by the Division of Building Design and Construction (DBDC) which manages construction contracts for the design and renovation of County buildings including fire stations, police stations, libraries, and parking garages. DBDC staff explained that field orders are used to direct a contractor to perform work not already included in the contract to address an unforeseen situation in order to prevent a delay or mitigate costs.

The current process DGS uses to issue field orders was implemented in response to the 2019 Internal Audit report. We observed that DGS's newly instituted field order authorization form reliably prompts project managers to contemplate and document most of the regulatory requirements for issuance of a field order. Every DBDC field order we reviewed described the unforeseen or unanticipated condition and addressed whether the field order was issued to mitigate costs or avoid a delay claim. However, we noted that the form did not prompt project managers to document that there was insufficient time to process a change order, a required criteria for all field orders. This requirement was not addressed in 98% of the DBDC field orders we reviewed.

Recommendation 2

We recommend the County develop a process that ensures field orders are issued in compliance with County regulations and that evidence of such is properly documented.

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 indicated concurrence with the OIG's recommendations. Appendix B summarizes the CAO's response to our recommendations and the OIG's assessment of the County's progress towards fully implementing the stated action.

APPENDIX A: CHIEF ADMINISTRATIVE OFFICER (CAO) RESPONSE

The Chief Administrative Officer provided the following response to our report:



OFFICE OF THE COUNTY EXECUTIVE


Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

February 3, 2025

TO: Megan Davey Limarzi, Inspector General

FROM: Richard S. Madaleno, Chief Administrative Officer 

SUBJECT: Inspector General Confidential Draft Report: County Usage of Field Orders – (OIG Publication #OIG-25-06)

Thank you for the opportunity to respond to the issues identified in the report. Construction field orders are vital to Montgomery County's ability to deliver infrastructure projects efficiently and without unnecessary delays. When unforeseen conditions arise during construction, field orders allow work to continue promptly, preventing costly project interruptions and ensuring that public services and amenities are completed on time. Field orders enable project managers to address unexpected challenges—such as design modifications or environmental concerns—while keeping the project on track and aligned with the county's goals. By facilitating quick decision-making and timely adjustments, field orders play a key role in maintaining project schedules, reducing risks, and ultimately enhancing the county's ability to serve its residents and businesses with reliable infrastructure and development projects.

We acknowledge that there are opportunities to improve the use of field orders across the County, including improved guidance and establishing clear policies and procedures. Your report's findings and recommendations will be useful as we continue to improve processes in the future. We are committed to taking appropriate steps to address the report's findings and recommendations, as noted below.

Recommendations 1: We recommend the County implement a universal policy governing the use of field orders, and a process that ensures compliance.

CAO Response. We concur with this recommendation. We will develop a formal written policy pertaining to field orders. Procurement plans to develop this policy by end of Q3, 2025 and the policy will be implemented starting January 1, 2026.

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Recommendation 2: We recommend the County develop a process that ensures field orders are issued in compliance with County regulations and that evidence of such is properly documented.

CAO Response. We concur with this recommendation. The guidance previously provided to the departments was not strictly adhered to. We are committed to developing a framework that ensures compliance and accountability in a consistent manner by the using departments. Procurement plans to update this guidance by end of Q3, 2025 and the guidance will be distributed by end of calendar year 2025.

Thank you for bringing these matters to our attention.

cc: Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Ash Shetty, Chief Procurement Officer & Director
Christopher Conklin, Director, Department of Transportation
Jon Monger, Director, Department of Environmental Protection
David Dise, Director, Department of General Services
Maxene Bardwell, Internal Audit Manager, Office of the County Executive

Appendix B: Recommendation Status and Follow-up

This Appendix provides a summary of the findings and recommendations presented in this report along with the OIG’s assessment of the county’s progress towards addressing the recommendations. The OIG categorizes progress towards implementation into the following 4 status groups:

- Open Unresolved: No management response, inadequate response, or no agreement on corrective action plan.
- Open In Progress: Agreed on planned action, auditee is in the process of implementing stated actions, but no evidence of implementation has yet been provided to the OIG.
- Open Resolved: Auditee provided support to OIG indicating implementation was complete, OIG testing to ensure implementation.
- Closed: Recommendation has been implemented.

Finding #	Finding	Recommendation	CAO Response	Status
1	The County has no formal written policy pertaining to field orders, leading to inconsistent practices amongst departments.	We recommend the County implement a policy governing the use of field orders, and a process that ensures compliance.	Concur: Procurement plans to develop a formal written policy pertaining to field orders by the end of Q3, 2025; and expects the policy will be implemented beginning January 1, 2026.	Open In Progress

Finding #	Finding	Recommendation	CAO Response	Status
2	Field orders were approved and issued without evidence of first having met the required conditions outlined in the procurement regulations.	We recommend the County develop a process that ensures field orders are issued in compliance with County regulations and that evidence of such is properly documented.	Concur: Procurement intends to develop a framework that ensures compliance and accountability in a consistent manner by using departments. Procurement plans to update guidance by the end of Q3, 2025, with distribution by the end of calendar year 2025.	Open In Progress