



Office of Legislative Oversight

MONTGOMERY COUNTY, MARYLAND

100 MARYLAND AVENUE, ROCKVILLE, MARYLAND 20850 • 301 ~~279-1932~~
279-1932

MEMORANDUM

December 21, 1979

TO: County Council

FROM: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

SUBJECT: Office of Legislative Oversight Review of County Contracts

1. Authority: Council Resolution 9-396, FY 80 Work Program of the Office of Legislative Oversight (OLO), directed the evaluation by OLO on a sampling basis of County contracts. This project was in accordance with the December 14, 1978, Final Report of the County Council Ad Hoc Committee on Legislative Oversight. Specifically, Final Report Recommendation #7, stated: "Use the Office of Legislative Oversight to evaluate particular contracts on a sampling basis, as a continuing, low key check on County contracting procedures."

2. Contract Reviewed: The subject of this review was a contract awarded by the Organization Development and Training Division, Office of Personnel, with the Center for Procurement Management Studies to teach a course on Procurement Contract Negotiations.

3. Background: The Final Report of the Ad Hoc Committee on Legislative Oversight recommended a number of actions relating to strengthening contracting procedures and training staff in contract related operations. Recommendation #4 of that report referred to the requirement for a strong formal training program in the application of administrative procedures. The Organization Development and Training Division had initiated the first training sessions on contract preparation and administration in early 1977. A second offering relating to contracts was conducted in late 1977, on writing the scope-of-work statement.

The most recent courses on contract preparation and administration were conducted in September 1979, utilizing senior managers of County government as guest lecturers and instructors. The second course in this series, conducted in November 1979, was on contract negotiations and utilized contract instructors. It is this contract which was reviewed. (Note: a third course will be conducted early next year on contract performance and evaluation.)

4. Contract Preparation and Execution: In March 1979, the Organization Development and Training Division (ODTD) formally solicited proposals for a course on negotiations from six contractors. Four responded. Selection was made by ODTD on the basis of experience, subject matter knowledge, availability, reliability and cost. The contractor selected was the Center for Procurement Management Studies. Those not selected were so informed in June 1979.

County Council
December 21, 1979
Page 2

The original plan was to conduct the course in FY 79 with funds programmed in that fiscal year. On April 26, 1979, ODTD requisitioned the Purchasing Office to encumber \$1,500 for "one Contract Negotiations Workshop to be conducted in June 1979," (See Exhibit A).

During the next two months, negotiations were initiated with the selected contractor. However, by mid-June it was apparent that negotiations of the contract with the Center for Procurement Management Studies would not be completed by the end of the fiscal year. Accordingly, a purchase order was prepared by the Purchasing Office and forwarded to the Accounting Division, Department of Finance, on June 13, 1979, to encumber \$1,500 of FY 79 funds to pay the Center for Procurement Management Studies for a contract negotiations workshop course. (See Exhibit B.) The Purchasing Office received verification of the encumbrance by FAM 326-2 report on June 20, 1979, (See Exhibit C).

A contract between Montgomery County Government and the Center for Procurement Management Studies to conduct a course in procurement contract negotiations, dated July 27, 1979, was negotiated at a firm fixed price of \$1,850. (See Exhibit D.)

The course was conducted November 7, 8 and 9, 1979, with payment made on December 3, 1979 utilizing \$1,500 in FY 79 funds and \$350 in FY 80 funds. (See Exhibit E.)

6. OLO Evaluation: In my opinion, everyone associated with the preparation and execution of this contract followed procedures and instructions (written and oral). Unfortunately, those procedures and instructions were neither complete nor clear enough to prevent encumbering funds in an amount insufficient to the contracted cost of the service. Both the Charter and County law address this issue:

Section 311 of the Charter provides: "No expenditures of County funds shall be made or authorized in excess of the available unencumbered appropriations therefor."

Chapter 11-B, Montgomery County Code, 1972, as amended, states: "No notice of award of contract shall be issued, and no contract shall be valid until the director of finance or his or her designee certifies that the unencumbered balance in the appropriation is sufficient to defray the amount of such contract or the first year amount of a multi-year contract."

County Council
December 21, 1979
Page 3

On July 27, 1979, when the contract with the Center for Procurement Management Studies was executed for compensation of \$1,850, only \$1,500 had been certified encumbered for that contract. The error in not encumbering sufficient funds can be traced directly to the process of encumbering funds from one fiscal year to be expended in the subsequent fiscal year. The Purchasing Office has an internal procedure for encumbering funds prior to approving an order for goods or services. That system, described earlier in this report, apparently works when the purchase request, purchase order and contract approval all occur in the same fiscal year and/or involve a firm compensation. In this instance, the process of encumbering the FY 79 funds were in accordance with internal procedures within the Purchasing Office and the Division of Accounts. However, when the contract was finally negotiated in July 1979, (FY 80) there was no procedures or controls to guarantee that the previously encumbered FY 79 funds (\$1,500) were sufficient to meet the FY 80 executed contract compensation (\$1,850). It must be noted that on May 23, 1979, the Center for Procurement Management Studies indicated that they were prepared to provide the negotiations course for "a total cost of \$1,850" (See Attachment 2 to Exhibit D).

8. Agency Comments: A draft of this report was distributed on December 4, 1979, to appropriate staff agencies for comments. Oral and written comments were received from two agencies: the Organizational Development and Training Division (ODTD) and the Department of Finance. All comments of the ODTD have been included in this report. The comments of the Director, Department of Finance are attached at Exhibit F.

9. Conclusions/Recommendations: Encumbering \$1,500 in FY 79 funds for a contract to teach a course on contract negotiations which, when executed in FY 80, was for \$1,850 was in violation of the Charter and the local purchasing law.

In my opinion, the personnel involved in processing this contract within the Organization Development and Training Division, the Purchasing Office and the Accounting Division (Department of Finance) did not wittingly violate the Charter or the local purchasing law.

This evaluation reveals again that the current County administrative procedures concerning contracts, especially those relating to professional service "mini-contracts," are outdated, incomplete and vague.

The Organization Development and Training Division has responded positively to the Ad Hoc Committee on Legislative Oversight's report recommendation (#4) and has instituted valuable training programs to enhance contract administration in County government.

County Council
December 21, 1979
Page 4

It is recommended that the current efforts by the Executive branch to comply with the recommendations in the Final Report of the Ad Hoc Committee on Legislative Oversight should be expedited, with emphasis on writing detailed, complete and clearly understood administrative procedures.

AM:cls

Attachments: Exhibits A-F

cc: County Executive
Chief Administrative Officer
County Attorney
Director, Department of Finance
 Accounting Division
 Purchasing Division
Director, Personnel Department
 Organization Development and Training Division
Chairperson, Contract Review Committee
Council Staff Director

**NOTE: IF THIS IS AN EMERGENCY PURCHASE PLEASE EXPLAIN
BRIEFLY**

TYED NO

TO AGENT

FROM ACCT.

MAILED

EXHIBIT A

VENDOR NO. 99999		DEPT. NO.: 2150		NAME Personnel Office						
CT 71770		AGENCY-NO.: DEPT. NO.: 2150		NAME Organ. Develop. & Training						
DATE 6/13/79	TYPST EAF	BATCH NO. 1		BATCH NO. 3 TO BE USED FOR RESUBMISSION	BATCH NO. 2					
		YE	MO	DAY	NUMBER	YE	MO	DAY	NUMBER	
EXPENDITURES			AMOUNT	SUP	PSEUDO	PROJ./LOC.	OBJ.	SUBSIDIARY	LIN	
			1.	\$1,500.00	325944		33			
PSEUDO CODE CHARGED BY ITEM NUMBER 										
Y O.	TRANS. DATE	LIQUIDATE		PAYMENT AMOUNT		LIQUIDATION AND CHANGE ORDER		BALANCE	REQUISITION NO.	
		P	F	P	F	C	INCREASE		DECREASE	37178
1									ACCEPTED	
2									REJECTED	
3									RESUBMISSION	
4										
APPROVED-DIV OF ACCOUNTS										
DATE										



MONTGOMERY COUNTY, MARYLAND

PURCHASE ORDER

PURCHASE ORDER NO.

IMPOBILIA

IMPORTANT
THIS P.O. NO. MUST APPEAR ON ALL
INVOICES, PACKAGES, PACKER
SLIPS AND CORRESPONDENCE.

TO : Center for Procurement Management Studies
15108 Emory Lane
Rockville, Maryland 20853

S H I P P E R : PERSONNEL OFFICE
Organ. Develop. & Training

DELIVER NO LATER THAN AS PER CONTRACT PAYMENT TERMS P/B CONTRACT FOR DESTINATION

ITEM NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	AMOUNT
BID/CONTRACT NO.: _____					
EFFECTIVE _____ EXPIRATION _____					
PAYMENT TERMS _____					
AUTHORIZED SIGNATURES <u>Dennis Miller</u>					
RETAINAGE _____					
PROJECT TITLE <u>Provide Contract Negotiations Workshop course.</u>					
OTHER: _____ _____					
1.	Encumber funds in the amount of One Thousand Five Hundred Dollars and No/100 (\$1,500.00).				\$1,500.00

Submit inquiries regarding THIS PURCHASE ORDER TO:

MONTGOMERY COUNTY, MARYLAND

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1000

6/30/79

101

\$1,500.0

MRS. M. WEAVER, PURCHASING DIRECTOR							
	Date	Voucher #	Retainage		Encumbrance		Total Balance
			Amount	Balance	Amount	Balance	
			CT _____				
1							
2							
3							
4							
5							

GENERAL STATEMENT - MARYLAND
ENCUMBRANCE REGISTER
AS OF 06/29/79

PROCESSED D 06/21/79

ITEM#	ITEM#	VENDOR NUMBER	VENDOR NAME	BATCH#	LI	TRANS	REFUND	FUND	AGENCY	CHAR	OBJ	PROJECT#	LOCATION	AMOUNT	APPROX.	STATUS	
														NUMBER	NO		
CJ-79294-	-	01342	WILF HARDWARE & LUMBER CO	790612-372-01	2111	802438	18	9910	62	38	F60423				25.00		
CJ-79295-	-	00579	INDUSTRIAL PHOTOGRAPHIC CO	790612-372-03	2111	359750	18	3400	62	38	F34004				17.50		
CJ-79299-	-	00455	GINN & COMPANY INC	790612-372-04	2071	408187	06	6210	20	36					37.44	*OVER*	
CJ-79300-	-	00221	COLUMBIA ELEG. SUPP. CO.,	790612-372-05	2071	466128	01	2524	20	22	FMS101				43.00	*OVER*	
CJ-79301-	-	00159	CAPITOL RADIO WHOLESALERS	790612-372-06	2111	482224	01	2730	20	37	RDI100				112.38		
CJ-79302-	-	03972	HUNTS PHILIP A CHEMICAL CO	790612-372-07	2071	408187	06	6210	20	36					140.00	*OVER*	
CJ-79303-	-	01249	VISUAL SYSTEMS COMPANY IN	790612-372-09	2071	408187	06	6210	20	36					33.95	*OVER*	
CJ-79304-	-	00150	CANTWELL PAPER CO., INC.	790612-372-09	2071	518258	01	4510	20	38	320164				109.86	*OVER*	
CJ-79305-	-	00110	POWER & ANDERSON	790612-372-10	2111	545343	01	4525	20	37	321541				77.55		
CJ-79306-	-	01055	SAVIN CORPORATION	790612-372-11	2111	330624	01	0100	20	16	000000				105.68		
CJ-79307-	-	00966	R & M SAW & TOOL COMPANY	790612-372-12	2111	581389	02	4070	20	37	000000				27.00		
CJ-79308-	-	00634	KUEMMERLING INDUSTRIAL KARL	790612-372-13	2111	581389	02	4070	20	37	000000				148.10		
CJ-79428-	-	00282	DAY-TIMERS, INCORP	790620-370-03	2111	306522	01	1010	20	36	000000				10.00		
CJ-79429-	-	01249	VISUAL SYSTEMS COMPANY IN	790620-370-04	2111	329953	01	1080	20	38	000000				18.75		
CJ-79430-	-	99999	KANE DELIVERY SERVICE	790620-370-05	2111	804104	12	8910	62	38	F60423				20.00		
CJ-79432-	-	01835	PROFESSIONAL PRODUCTS, IN	790620-370-07	2111	525816	01	4523	20	38	495764				16.25		
CJ-79433-	-	01055	SAVIN CORPORATION	790620-370-08	2111	546034	01	4525	20	16	321545				121.50		
CJ-79434-	-	00426	THIRIE, INC. & CO. INC.	790620-370-09	2111	456731	82	7300	20	21	000000				1.62		
CJ-79436-	-	03935	A & W CAMPING SUPPLY INC	790620-370-11	2111	526194	01	4523	20	38	495764				69.95		
CJ-79452-	-	99999	M.J.A.	790620-372-01	2111	318675	81	1270	20	38	000000				11.00		
CT-71205-A	XX-11203-	99999	GEOPGETOWN UNIVERSITY	790611-310-01	2071	525139	01	4522	20	12	322002				1,000.00	*OVER*	
CT-71442-A	XX-11222-	99999	D & R CONCRETE CONTRACTOR	790619-310-01	2111S	874123	30	4700	60	62	777914				605.00		
CT-71487-B	XX-11201-	99999	AMERICAN FOUNDATION FOR	790529-310-01	2111S	765206	15	5560	62	29	F55664				1,800.00		
CT-71571-A	-	02482	HOUSING OPPURTUNITES COMM	790523-310-01	2111	761288	15	5560	62	29	F55664				71,420.00		
CT-71571-B	-	02482	HOUSING OPPURTUNITES COMM	790523-310-02	2111	761296	15	5560	62	29	F5566A				24,450.00		
CT-71571-C	-	02482	HOUSING OPPURTUNITES COMM	790523-310-03	2111	764191	15	5560	62	29	F5566A				3,220.00	*OVER*	
CT-71671-D	-	02482	HOUSING OPPURTUNITES COMM	790523-310-04	2111	763276	15	5560	62	29	F5566A				1,440.00	*OVER*	
CT-71671-E	-	02482	HOUSING OPPURTUNITES COMM	790523-310-05	2111	763268	15	5560	62	29	F5566A				10,050.00	*OVER*	
CT-71717-A	-	89669	CITY OF ROCKVILLE	790529-304-01	2111	761262	15	5560	62	29	F5566A				5,000.00	*OVER*	
CT-71717-B	-	89669	CITY OF ROCKVILLE	790529-304-02	2111	761270	15	5560	62	29	F5566A				1,250.00	*OVER*	
CT-71717-C	-	89669	CITY OF ROCKVILLE	790529-304-03	2111	764076	15	5560	62	29	F5566A				150.00	*OVER*	
CT-71720-A	-	99999	CYSTIC FIBROSIS FOUNDATION	790529-302-09	2111	765339	18	5560	62	29	F5566A				2,500.00	*OVER*	
CT-71720-B	-	99999	CYSTIC FIBROSIS FOUNDATION	790529-302-09	2111	765347	15	5560	62	29	F5566A				600.00	*OVER*	
CT-71725-A	-	99999	BOYS CLUBS OF GREATER	790529-301-20	2111	763219	15	5560	62	29	F5566A				2,500.00	*OVER*	
CT-71725-B	-	99999	BOYS CLUBS OF GREATER	790529-301-21	2111	763227	15	5560	62	29	F5566A				580.00	*OVER*	
CT-71738-	-	01686	DANAC REAL ESTATE INVEST	790614-303-01	2071	524223	01	4521	20	38	320799				170.00	*OVER*	
CT-71739-	-	01686	DANAC REAL ESTATE INVEST	790614-303-02	2071	524223	01	4521	20	38	320799				3,300.19	*OVER*	
CT-71743-	-	99999	J HUNTER PUGH JR.	790614-303-03	2111	819128	30	8100	60	61	621022				400.00		
CT-71770-	-	99999	CENTER FOR PROCUREMENT	790613-300-01	2111	325944	01	2150	20	33	000000				1,500.00		
CT-71771-	-	99999	CINI-GRISSON ASSOCIATES	790613-300-02	2111	329805	01	2510	20	12	000000				5,500.00		
PR-51983-	XX-11337-	03958	EAGLE SIGNAL CORPORATION	790620-391-01	2111S	568774	01	4050	20	37	000000				144.92		
PR-55245-	XX-11334-	01380	CORT FURNITURE RENTAL	790620-391-02	2111S	763615	15	5560	62	38	F5566A				24.00		
PR-56223-	-	03856	COMET OFFICE EQUIPMENT	790507-305-01	2111	763649	15	5560	62	38	F5566A				400.00		
PR-56223-	-	00000	THE CENTRE INC.	790620-310-01	2111	763643	15	5560	62	38	F5566A						

**Montgomery County
Government**
Making a County a Community

July 27, 1979

Ms. Dejon R. Mayberry
Vice President
Center for Procurement Management Studies
15108 Emory Lane
Rockville, Maryland 20853

Dear Ms. Mayberry:

This letter is to confirm the agreement between the Center for Procurement Management Studies (Contractor) and the Montgomery County Government (County) for a course in "Procurement Contract Negotiations (Course)."

1. Scope of Services

The Contractor will conduct a course in Procurement Contract Negotiations for approximately 35 County government employees whose job responsibilities include negotiating contracts for the County government.

The Course will be conducted as described in the Contractor's descriptive proposal (Attachment #1) as amended by the letter from Dejon Mayberry to Dennis Misler dated May 25, 1979 (Attachment #2). The proposal and amending letter are hereby made a part of this agreement and incorporated herein by reference.

Instructors for the Course shall be the three individuals listed on page 10 of the proposal. The County shall be notified no less than one month prior to the presentation of the Course of any changes in the instruction staff. Changes in the instruction staff, will be subject to County approval. If changes are not approved, the County will have the option of terminating this contract without financial obligation.

2. Term

Contractor will conduct the course on three successive days - Wednesday, November 7, 1979, Thursday, November 8, 1979, and Friday, November 9, 1979. Each day's sessions will begin at 9:00 a.m. and end at 4:30 p.m. There will be a break for lunch each day.

3. Course Location

The Course will be conducted at the Montgomery County Public Service Training Academy, 10025 Burntstown Road, Rockville, Maryland 20850.

*(Note: Attachment #1 is not included with this exhibit.)

4. Compensation

In consideration for the services provided herein, the County will pay the Contractor a firm fixed price of \$1,850.00 within thirty days of the submission of an invoice by the Contractor after completion of the Course.

5. Contract Coordination

Dennis Misler, Senior Personnel Specialist, Personnel Office shall be the Contract Coordinator.

6. County Responsibility

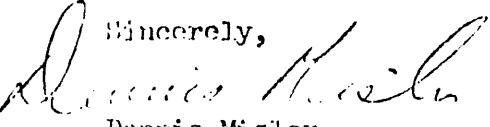
County responsibility is limited to:

- a. providing approximately fifteen participants for the Course
- b. supplying a classroom for the Course
- c. supplying 5 cassette tape recorders for use during the Course

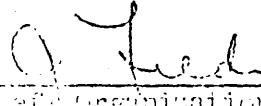
7. General Conditions of Agreement

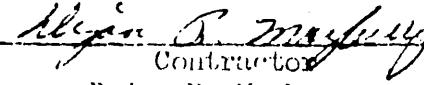
The provisions of the General Conditions of Agreement are hereby made part of this agreement and incorporated herein by reference.

This agreement will take effect only upon approval of the Chairperson, Contracts Review Committee, as evidenced below by his signature.

Sincerely,

Dennis Misler
Senior Personnel Specialist

Approved By:


Chairperson Organization Development & Training
Division
Jerry Feldman


Dejon R. Mayberry
Vice President
Center for Procurement
Management Studies


Personnel Director
Clinton A. Hilliard


Chairperson, Contracts Review Committee
Lewis Roberts

ATTACHMENT 2

May 23, 1979

TO: Dennis Misler

FROM: Dejon Mayberry

RE: Negotiation Course

As follow up to our recent conversations, these alterations to the March 30, 1979, proposal submitted by the Center for Procurement Management Studies are supplied. We believe you will find them to be in line with those requirements you outlined for us.

1. Center evaluations described on page seven of the proposal will not be supplied
2. Price is to be determined on a daily -- rather than hourly -- basis. Each course day will involve six hours plus a one hour lunch period.
3. The course will be compressed from the planned four eight-hour days to three six-hour days. It is anticipated that cooperation between your office and the Center will work to make the shorter program as effective as the longer period. To maximize the time available, we understand that the following will be done:
 - A. Only those participants considered to be most appropriate -- and most likely to benefit from the program -- will be selected.
 - B. No more than 15 participants will take part in the course.
 - C. Tape recorders will be supplied by your office for limited, but specific use in conducting class exercises.

By these means the Center believes it can offer a substantive program in a shorter time period and at less expense to the County. These alterations make it possible to provide the negotiation course for a total cost of \$1850. While this is the lowest figure which we can suggest, we believe we can provide a satisfactory learning experience involving most of those elements described in our March proposal.

STANDARD VOUCHER

MONTGOMERY COUNTY MARYLAND

PREPARATION DATE	AGENCY CODE	VENDOR CODE	VOUCHER NO.	BATCH 1 YEAR	MONTH	DAY	NUMBER	BATCH 2 YEAR	MONTH	DAY	NUMBER
12-3-79-		99999	SV 43943	29	12	03					

COMMENTS:

atmos

01	NAME		
	CENTER FOR PROCUREMENT		
	43 rd ZIP CODE	56	SOC. SEC. NUMBER
	Z 0 8 5 3		
02	43 rd	ADDRESS	
	MANAGEMENT STUDIES		
	43 rd	ADDRESS	
	15108 EMORY LANE		
03	43 rd	ADDRESS	
	ROCKVILLE, MARYLAND		
	43 rd	ADDRESS	

FINANCE USE ONLY

PREPARED BY

AUTHORIZED BY

CODING REVIEW

REASON FOR RESUBMISSION:

VOUCHER CONTROL TOTAL

卷之三

**FOR RESUBMISSION
STRIKE BATCH 1 INFO
AND COMPLETE
BATCH -2**

AUTH AGENCY SIGN

FOOTINGS VERIFIED

CONTRACT TERMS VERIFIED

DISCOUNTS TAKEN

5

010

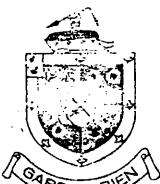
7/27/7

478

CHECK DATE

INDEXES

23



REQUEST FOR PAYMENT

MONTGOMERY COUNTY, MARYLAND

TO: DEPARTMENT OF FINANCE, DIVISION OF ACCOUNTS

Use of this form subject to provisions of Administrative Procedure 2 - 2

Requesting Dept./Agency	Agency Code
Personnel Office, Organization Development & Training Division	2150
Request Payment of the Attached Invoices To:	Total Amount
CENTER FOR PROCUREMENT MANAGEMENT STUDIES	\$350.00

Items Previously Encumbered:

Invoice No.	Encumbrance No. or Call Number No.	Amount

Items Not Previously Encumbered:

FY	Invoice No.	Pseudo Code	Project Location	Obj. Code	Amount
80		325944		33	\$350.00

Authorized Department Signature

Date

11/26/79

Approved/Division of Accounts

Date

MEMORANDUM

December 14, 1979

TO: Andy Mansinne, Director, Office of Legislative Oversight
FROM: A. W. Gault, Director of Finance
SUBJECT: Office of Legislative Oversight Review of County Contract

This is in response to a memorandum dated December 4, 1979, from the Office of Legislative Oversight concerning the Finance Department's system for encumbering contracts. Specifically the memorandum cites a contract that was awarded for retaining instructors to conduct a series of courses on contract negotiations. The service contract was awarded as a direct result of the final report of the Council Ad Hoc Committee on Legislative Oversight. This report contained a number of recommendations relating to strengthening contract procedures and training staff in contract management.

OLO's memorandum correctly points out that the subject contract was programmed for implementation in FY 79 and funds were provided in the Personnel Office Budget for that year. Steps were initiated in March, 1979 to negotiate the aforementioned contract but due to delays, apparently regarding cost, the contract was not consummated until fiscal year 1979-80. In order to have sufficient funds available to pay for this contract, \$1,500 was encumbered in June 1979 in the name of the ultimate contractor. In July the formal contract was executed in the amount of \$1,850, \$350 in excess of the original encumbrance. The additional \$350 was not encumbered against the fiscal year 80 appropriation. The training courses were conducted on November 7, 8 and 9, 1979, and payment was made on December 3, 1979 in the amount of \$1,850. Based on the processing of the foregoing contract, the OL0 arrived at the following conclusions and recommendations:

1. "Conclusions/Recommendation: Encumbering \$1,500 in FY 79 funds for a contract to teach a course in contract negotiations which when executed in FY 80 was for \$1,850 was in violation of the Charter and the local purchasing law. In my opinion, the personnel involved in processing this contract within the organization of development and training division, Purchasing Office, and the Accounting Division (Finance Department) did not willingly violate the Charter or the local purchasing law."

"This evaluation reveals that the current county administrative procedure concerning contracts, especially those related to professional services, mini-contracts, are outdated, incomplete and vague."

"It is recommended that the current efforts by the Executive Branch to comply with the recommendations and the final report of the Ad Hoc Committee on Legislative Oversight should be expedited with emphasis on writing detailed and complete understood administrative procedures."

Following are my observations regarding the conclusion of the OL0 draft report.

• Violation of Charter and County Code

The payment of a contract in excess of an encumbrance is not in violation of the charter or county code. Section 311 of the charter provides "no expenditure of

December 14, 1979

county funds shall be made or authorized in excess of the available unencumbered appropriations therefor". At the time the payment to the contractor was made, there was sufficient unencumbered appropriation in the Personnel Office's budget to pay the additional \$350 that was not encumbered. The charter refers to the available unencumbered appropriation as the criterion for making a valid expenditure. In this case, the Personnel Office appropriation had an unencumbered balance in excess of \$200,000 when the payment to the contractor was made. There seems to be some confusion on the part of the OLO over the definition of an encumbrance and an appropriation. OLO is apparently of the opinion that an encumbrance has the same legal status as an appropriation under County procurement laws. It is, pursuant to an informal opinion of the County Attorney's Office, entirely proper to pay an invoice or contract in excess of an encumbrance if there is sufficient unencumbered appropriation available. As a practical matter, each year hundreds of purchase orders are paid in excess of encumberances when valid invoices are approved by the departments/agencies. An invoice can be in excess of the encumbrance for many valid reasons, i.e., additional freight cost, quantity changes, product substitution, etc. The increase in an invoice that is over the encumbered purchase order is not re-encumbered for the following reasons:

1. The exact amount is known and the total invoice will be processed against the unencumbered appropriation making the re-encumbrance unnecessary.

2. The invoice represents a valid liability of the County Government and must be paid if there is sufficient unencumbered appropriation.

In conclusion, it would be a costly procedure, without any corresponding benefit, to process additional encumbrances under the foregoing conditions. Again, for obvious reasons, payrolls, interfund charges (inventories, motor pool, etc.) and MIS charges are not encumbered.

With respect to the alleged violation of the Montgomery County Code, Chapter 11 B reads in part that no contract shall be valid until the Director of Finance shall certify that the unencumbered balance in the appropriation is sufficient to defray the amount of such contract.

It is the policy of the Finance Department to notify the department or agency when there is insufficient unencumbered appropriation to pay a proposed contract or purchase requisition. Since virtually all contracts and purchase orders are encumbered within the existing appropriation level there is little value in establishing a costly and time consuming positive certification system. Under the current system, it can be assumed by the department/agency that a purchase order or contract is valid (certification of funds) if it is mailed to the vendor or awarded to the contractor. Accordingly, under this policy the Finance Department assumes full responsibility for any over expenditure. In my judgement this policy is in full compliance with the letter and spirit of the County procurement law.

* The Current County Administrative Procedures Concerning Encumbering Contracts

[t is the present policy of the Finance Department to encumber all purchase orders and contracts. The failure to encumber the subject contract in full was a human error, not a system or procedural problem. The subject contract was unique in that an estimated dollar amount was encumbered prior to the actual negotiation of the contract cost. In this regard, virtually all contract costs are negotiated prior to the time they are encumbered. If there is any change in the dollar amount of a contract, the change in cost is reflected in a change order that is encumbered against

Andy Mansinne

-3-

December 14, 1979

the unencumbered appropriation. Since the subject contract was negotiated after the encumbrance, there was no change order processed that would increase the encumbrance. It should be noted however, that at the time of the payment of the subject contract the difference in the contract amount and the encumbrance was noted by the Finance Department's Accounts Payable staff and approval was received from the Purchasing Office prior to the actual payment of the contract.

I would also point out that as part of the administrative manual, there are two procedures which cover County contracts; AP 3-4 covers contracts in general, and AP 3-5 covers professional consultant contracts. As in the case of any administrative procedure, they need to be the subject of continuing review in order to meet changing conditions and policies. However, it is my opinion that paragraphs 2.3, 7.4, and 7.5 clearly delineate the responsibility for insuring that sufficient funds are available to cover the cost of all contracts, mini or otherwise.

In my opinion the existing expenditure controls are more than adequate to prevent an over expenditure of an appropriation. In support of this statement, it should be noted that since the installation of the FAMIS financial accounting system in 1973 there has never been an over expenditure of an appropriation that has not been detected prior to the time of payment. Obviously, there were times that over expenditures occurred, however, these over expenditures were approved by the Budget Office prior to payment.

jvm

