



Office of Inspector General

Fiscal Year 2011 Annual Report

October 3, 2011



A Message from the Inspector General

Montgomery County Code §2-151 requires the Inspector General to submit to the County Executive and Council an annual report on the activities of the Office and its major findings and recommendations during the previous year.

I was appointed Inspector General on April 26, 2011 to complete the unexpired term of retired Inspector General Thomas Dagley, which began July 1, 2009 and will end June 30, 2013. Since he served as head of the office during 10 of the 12 months covered by this report, most of the significant work identified results from the efforts of Mr. Dagley and his staff.

This report includes summaries of the independent reviews and investigations completed during FY 2011 that recommended corrective action to address internal control and management oversight deficiencies. It also addresses the more significant challenges we face.

I would like to recognize the significant support provided to this office in FY 2011 by Council members, the County Executive, and their staffs during this transition. I will appreciate and look forward to their continued support.

Respectfully submitted,

Edward L. Blansitt III
Inspector General

Mission and Goals

Our mission is to conduct objective and independent audits, inspections, and investigations relating to Montgomery County Government (MCG) programs, operations, and independent County agencies to:

- promote economy, efficiency, and effectiveness
- prevent and detect fraud, waste, and abuse
- promote legal, fiscal, and ethical accountability
- strengthen professional relationships
- inform stakeholders of problems and corresponding corrective actions

Statutory Responsibilities

Our office was established by the Montgomery County Council in 1997. We are an independent office that relies on Government Auditing Standards¹ and the Quality Standards for Inspections² and Investigations³ to address the following responsibilities prescribed by Montgomery County Code §2-151:

1. review the effectiveness and efficiency of programs and operations of County Government and independent County agencies
2. prevent and detect fraud, waste, and abuse in government activities
3. propose ways to increase the legal, fiscal, and ethical accountability of County Council-funded agencies⁴

To carry out our responsibilities, we:

- maintain an independent objective organization to conduct audits, reviews, and investigations
- take appropriate action to prevent and detect fraud, waste, and abuse
- receive and investigate credible complaints from any person or entity
- report possible criminal violations of law to the State's Attorney for Montgomery County, the Maryland State Prosecutor, the Attorney General, the U. S. Attorney, or other appropriate law enforcement agency⁵
- review existing and proposed legislation and regulations to strengthen controls and increase accountability
- submit reports with recommendations, as appropriate, to County leaders

¹ Government Auditing Standards, U. S. Government Accountability Office (July 2007 Revision)

² Quality Standards for Inspection, President's Council on Integrity and Efficiency (January 2005)

³ Quality Standards for Investigations, President's Council on Integrity and Efficiency (December 2003)

⁴ In addition to the Executive Branch, the Council-funded agencies include the Montgomery County Public Schools, Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, Montgomery College, Housing Opportunities Commission, Revenue Authority, and any other governmental agency (except a municipal government or a State-created taxing district) for which the County Council appropriates or approves funding, sets tax rates, or approves programs or budgets

⁵ For example, federal offices of Inspectors General

Our Challenges

The most significant challenge facing the OIG in the two remaining months of FY 2011 was maintaining our initiatives following Inspector General Dagley's April retirement. The only remaining member of the OIG staff accepted a new full-time position and resigned from his full-time position with the OIG in May. Indeed, identifying and hiring superior personnel to staff a largely-vacated office became an urgent necessity. For FY 2011 and FY 2012, four positions, supplemented by contract audit support, were authorized in the OIG budget. At the beginning of FY 2012, the Inspector General and Deputy Inspector General, who conduct and direct audit and investigative activities as well as promote and manage the office, were both on board. Further, we hired a full-time Assistant Inspector General with legal and investigative experience in September.

During FY 2012, all currently authorized positions will be filled. This is important to ensure quality work. It is our policy that, to accurately capture the essence of interviews and protect the integrity of the process, two staff members will normally be assigned to work on each significant audit or investigation. Staff members will each be assigned to no more than two to three projects simultaneously.

We have also obtained a new email address (report.fraud@montgomerycountymd.gov) and phone number (240-777-7644) for the Fraud Hotline that will go directly to our office to be answered by our staff.

Our work plan <http://www.montgomerycountymd.gov/content/InspectorG/pdf/IGWorkPlan.pdf> for FY 2012 and 2013, dated August 26, 2011, submitted to the County Council and County Executive, identifies our strategy, audit plans, and administrative initiatives, the results of which will appear in the Annual Report for FY 2012.

Incident Processing and Resolution

During FY 2011, we received 43 incident reports through the Hotline. Eleven of these were allegations of fraud, while policy issues, conflicts of interest, theft of time, and customer relationships made up most of the remainder. Sixty-three percent of the incident reports were anonymous, which, while completely acceptable, increases the difficulty of investigating the issues raised in the complaint.

We also decided upon taking office to ensure we had not overlooked any issues in the transition period. For that reason, we conducted a thorough review of all incident reports received since July 2009. This resulted in our addressing and resolving over 75 reported concerns.

In May 2011 we initiated a formal process of referring issues of a managerial nature to the County's Chief Administrative Officer for resolution. In most cases, we request response by a certain date and reserve the right to follow up. For minor matters brought to our attention but which are not appropriate for OIG review, we request no response.

As a result of these analyses and consistent with our newly implemented procedures, we referred seven matters to various County departments for follow-up and opened seven preliminary inquiries to determine whether to open an investigation or audit in response to the issues raised in the complaints. County Management has already satisfactorily resolved four of these complaints.

FY 2011 Results - Audits

As stated above, this annual report addresses all OIG activities in FY 2011 (July 1, 2010 through June 30, 2011). Because this was a year of transition, Inspector General Dagley was responsible for all planning and execution of the audits described in the following paragraphs. Following his departure, our efforts focused on the follow-up and assessment efforts to resolve and conclude the outstanding issues from his audits and investigations.

Review of Montgomery County Government Procurement and Payment Practices for Selected Contracts

Background

This review was undertaken because of allegations received by the OIG in October 2009 regarding possible questionable payments by the Department of General Services (DGS) to Tito Contractors, Inc. (Tito) in FY 2007 and 2008. In response to the report's findings and recommendations, the OIG received a response from the Director, DGS, dated January 26, 2011.

Key Points in the OIG Report

DGS awarded 18 time and material contracts to Tito from FY 2005 through FY 2009, and Tito submitted and was paid on 3,038 invoices totaling \$14.2 million. The contracts were for various services, including snow removal, carpentry services, small repairs, restoration of parking facilities, masonry services, parking garage sweeping, and miscellaneous services. The audit found through testing of 172 of the 3,038 invoices paid in FY 2007 and 2008 that 104 invoices lacked supporting documentation for labor costs totaling \$533,477. In addition, 166 of the 172 invoices did not have any support for material costs totaling \$232,932. Six invoices did not have any supporting documentation at all and did not identify whether the costs were for labor, materials, or another allowable category. The report recommended that DGS staff receive additional training on the approval process for invoices and conduct additional reviews of the costs questioned in the audit as well as the other invoices submitted by Tito.

Key Points in DGS' Response

The Director of DGS agreed with the report's findings and recommendations. The Director's response provided a number of actions DGS would take to improve operations and deal with Tito's invoices, including altering the review process of invoices, training for DGS personnel on the approval process for invoices, and performing additional reviews of the invoices questioned in the audit as well as other Tito invoices.

Key Outcome

The report's findings and recommendations were agreed to by DGS. The actions planned by the DGS Director are appropriate and when implemented should resolve the deficiencies.

Review of Allegations of Questionable Payments to Developers for the Hoyles Mills Wastewater Pumping Station and Force Main CIP Projects (West Germantown Development District)

Background

On October 26, 2010, the County Council adopted Resolution No. 16-1544 that terminated the Clarksburg Town Center Development District (CTCDD). The next day, October 27, 2010, prior to the OIG's beginning the fieldwork for the review of the CTCDD Water Main Project, the OIG began receiving allegations regarding questionable payments to the developers (Woodcliffe, Arcola, and Artery) who designed and constructed the Hoyles Mill Wastewater Pumping Station/Force Main (HMWPS/FM) capital improvement program (CIP) projects. These projects were part of the Montgomery County Government (MCG) West Germantown Development District (WGDD) and the Washington Suburban Sanitary Commission (WSSC) infrastructure projects approved for reimbursement to the developers by WSSC⁶. There was concern that the developers of the HMWPS/FM projects were improperly reimbursed by MCG and WSSC for similar design and construction costs. Based on the allegations received, the OIG expanded the objectives, scope and methodology of a planned review of the CTCDD Water Main project to include acquisition/procurement policies and procedures, and management practices used to make payments for the HMWPS/FM CIP projects.

In response to the report's findings and recommendations the OIG received responses from the MCG Chief Administrative Officer (CAO) dated March 15, 2011 and the WSSC General Manager (WSSC/GM) dated March 9, 2011. The report and the responses can be found on the Montgomery County OIG Website: <http://www.montgomerycountymd.gov/ig>

⁶ The Council adopted Resolution No. 13-1135 on January 13, 1998 that created the WGDD in an area of 670.71 acres in Germantown that included properties owned by Artery Hoyles Mill, LLC, Bethesda, MD and Arcola Investment Associates, Hyattsville, MD. The Resolution identified certain infrastructure improvements (e.g., roads, water, and sewer), including the HMWPS/FM projects, that were to be funded through bonds to be issued through MCG Department of Finance as part of the MCG-approved CIP budget. The Resolution also authorized the imposition on all properties in the WGDD special assessments and taxes to pay the principal of, interest on, and any redemption premium on, bonds issued under a separate resolution.

During the same period that the Council adopted Resolution No. 13-1135, the WSSC had standard procedure CUS 94-03, System Development Charge (SDC) Developer Credits and Reimbursements, in place. An SDC is a fee paid to WSSC at the time of application for a plumbing permit intended to cover the cost of building a CIP project needed to accommodate growth. WSSC's standard procedure allowed a developer to be eligible for SDC credits after WSSC authorized the design and construction of a qualified project. The WGDD HMWPS/FM projects were approved as separate qualified projects by WSSC and eligible for SDC credits. WSSC policies allowed developers to submit a request to WSSC's Office of Internal Audit to audit developers' design and construction costs prior to WSSC reimbursing developers for costs.

Key Points in the OIG Report

The audit, through extensive analysis of supporting documentation and interviews with key personnel involved or familiar with the project, concluded that MCG and WSSC reimbursed the developers for similar design and construction costs. However, certain data, including purchase orders, invoices, or other detailed financial records requested from MCG, were not available for the audit, in part due to the duration of time since the documents were generated and the timing of the audit. Lack of this documentation may have inhibited additional analysis of the circumstances from which to draw conclusions.

The OIG analysis of records provided by the MCG Department of Finance found that the Department of Finance approved four cash payments totaling \$3,715,602 that were made between April 11, 2002 and April 21, 2003 to Woodcliffe Development District, c/o (name omitted by OIG), Linowes and Blocher (escrow agent) for the HMWPS/FM projects. An analysis of records provided by WSSC found that WSSC approved four cash payments totaling \$1,869,691 that were made between December 9, 2005 and March 7, 2006 for the HMWPS/FM projects. In addition, WSSC issued SDC credits totaling \$1,070,306 to one of the developers between December 9, 2005 and March 7, 2006.

The combined data show that MCG and WSSC cash payments and SDC credits to the developers and their representative for the HMWPS/FM projects totaled \$6,655,600. The report provides extensive commentary of discussions with key MCG and WSSC personnel, including the WSSC Internal Auditor, on whether “double payments” occurred and who knew what and when. Two recommendations were provided in the report:

1. that the WSSC General Manager and the MGC CAO use the information in the report to conduct a thorough review of all fiscal, ethical, and legal accountability issues associated with the WGDD HMWPS/FM CIP projects to ensure accountability in government and developer actions and to ensure that County taxpayers who reside in the WGDD and pay the annual special tax are protected from any unnecessary or unreasonable payments, and
2. that WSSC and MGC jointly assess and seek recovery of the full amount of all questionable payments or reimbursements made to the developers or their representative.

Key Points in the CAO's Response

The CAO took issue with the report's findings and recommendations. The CAO's response asserts that there were two distinct flows of payments to the developers. One group of payments for the completed infrastructure construction was paid by MCG from bond proceeds; the other was a reimbursement based on the SDC program and was paid by WSSC. The response provides extensive discussion that asserts that the two financing mechanisms were legal and did not constitute “double billing”. The CAO response specifically states, “The two infrastructure financing mechanisms are indeed complex, especially when both are present. But, the actions by both County offices were appropriate.”

Key Points in the WSSC/GM's Response

The WSSC response reiterates how the SDC program works and that WSSC abided by the program requirements. The response agrees with the report that two sets of payments were made in the total amount of \$6,655,600, which was paid to the developers.

Summary

The complexity of the management, oversight, and payments for the HMWPS/FM projects, as noted by the CAO in his response, and the inherent confusion of having two government entities involved in the project and each entity having authority to disburse funds to the same developer cannot be overstated. Whether or not an actual “double payment” occurred and was “legal”, the appearance of a “double payment” was evident.

Key Outcome

On June 21, 2011, the County Council introduced Bill 23-11, Development Districts, Special Taxing Districts – Duplication of Funding, sponsored by Councilmember Elrich, Council President Ervin, and Councilmembers Berliner and Navarro. A public hearing was held on July 12, 2011.

This Bill results from concerns expressed by Councilmembers about potential double-funding of infrastructure items by development districts or special taxing districts and other government agencies at the March 28 joint worksession of the Government Operations and Fiscal Policy Committee and Transportation, Infrastructure, Energy, and Environment Committee. The worksession was held to review the OIG's report.

Bill 23-11 would prohibit any development district from financing any infrastructure improvement that is or may be financed or credited by any other government agency, and similarly prohibit the White Flint Special Taxing District from imposing a tax to pay for any infrastructure improvement that is or may be financed or credited by any other government agency.

Maryland Court of Appeals Ruling

In November 2008, Sergeant Shropshire and Captain Parker-Loan of the Montgomery County Police Department (MCPD) responded to an automobile accident involving former Montgomery County Assistant Fire Chief Gregory J. DeHaven. A complaint subsequently was filed questioning the police officers' conduct during the accident investigation, in which it was alleged that both had violated various administrative rules. The Internal Affairs Division (IAD) of the County's Police Department determined on May 26, 2009 that Sergeant Shropshire and Captain Parker-Loan had committed “no administrative violations.”

The OIG, through the County Attorney, requested the right to review the records of this internal investigation. The Circuit Court for Montgomery County ordered the disclosure of records of

the internal investigation, but not information “of a personal nature” unless “directly relevant to the underlying investigation.” The County Attorney, on behalf of the OIG, then appealed to the Court of Special Appeals, asserting that the records, in their entirety, should be disclosed to the OIG. The Court of Appeals of Maryland granted the officers’ petition for a writ of certiorari before the Court of Special Appeals acted.

The Court of Appeals ruled that the records of an internal investigation pertaining to the alleged violation of administrative rules are “personnel records” and therefore may not be disclosed under the Maryland Public Information Act (MPIA) to the Montgomery County Inspector General.

Audit and Investigative Standards/Professional Development

Our new team members are well qualified to address statutory responsibilities and the action plans of the FY 2012-2013 Work Plan. During FY 2011, former and current members of our staff received continuing professional education and other training sponsored by County Government, American Institute of CPA’s, Association of Government Accountants, Association of Certified Fraud Examiners, and the Greater Washington Society of CPA’s, in areas that included financial and performance auditing; fraud, waste and abuse investigations; performance management; and ethics.

Professional Relationships

During FY 2011 OIG staff met periodically with Councilmembers; the County Executive; the Chief Administrative Officer and senior Executive staff; the County Attorney; the Council Staff Director and senior Council staff; and senior staff from the Office of Legislative Oversight and Montgomery County Public Schools. In addition, we met with state and federal auditors and prosecutors and other inspectors general. During these meetings, standards applicable to the inspector general community were discussed along with other matters of mutual interest. As in prior years, FY 2011 discussions helped ensure that OIG audits and investigations did not duplicate or conflict with other efforts.

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