
Administration of Montgomery County Department of Transportation Tree Planting Services Contracts

Presentation of Final Report to the Montgomery County Council
Transportation, Infrastructure, Energy & Environment Committee

July 8, 2013



MONTGOMERY COUNTY MARYLAND

OFFICE OF THE INSPECTOR GENERAL

Administration of Department of Transportation Tree Planting Services Contracts

Background

- OIG received a complaint on June 7, 2012 alleging that a contractor for the Department of Transportation, Division of Highways, Tree Maintenance Section had failed to comply with the terms of the contract and that the Contract Administrator had misused funds and mismanaged the contract.
- The complainant, a certified arborist employed by a firm under contract with MCDOT to inspect work performed by the tree planting services (TPS) contractor, subsequently alleged that his discharge on June 13, 2012 was in retaliation for reporting on the improper actions by the Contract Administrator and is a violation of Montgomery County Code 11B-35A.

Objective:

To Determine the validity of the complainant's allegations



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Finding 1 Mismanagement of the tree planting services contract and misuse of the arborist inspection contract

The MCDOT, Division of Highway Services' Tree Maintenance Section accepted and paid for:

- work performed without authorizing documents;
- planting services and materials provided by the TPS Contractor for which the arborist inspectors identified improper depth of planting, presence of burlap, wire, or twine, root girdling, disease or canker irregularities that could limit root development and shorten the life span (45% did not meet planting standards);
- plant material substituted by contractor over multiple planting seasons without prior authorization. -- Chief of the MCDOT Division of Highway Services stated to the OIG that contractor's unilateral action to substitute plant material would represent a breach of the contract.

Contract Administrator gave notification to contractor to cure planting defects in an August 2012 letter – at least *three weeks after the Office of Inspector General announced the commencement of this investigation.*



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MCDOT purchased extended guarantees at a cost exceeding replacement cost of the trees.

- One year of extended warranty was obtained on 55 cherry trees for \$8,250 and \$930 in incidental costs - a total of \$9,180.
 - Extended warranties cost \$150 per tree compared to \$79 for a new Okame cherry tree or \$95 for a new Yoshino cherry tree with a full one-year warranty.
 - The Contract Administrator stated he believed the purchase to be justified because the TPS contractor would not honor original guarantee on trees that complainant had excavated. Complainant documented inspection of 36 trees of all species over multiple years.
 - The MCDOT Division Chief stated that he knew of no reason that should prompt the County to purchase an extended warranty.
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Recommendations – Finding 1

1. We recommended that the MCDOT ensure:
 - inspection of the trees planted by the contractor, corrective action and enforcement of contract terms;
 - timely supervisory oversight of the activities of the Tree Maintenance Section and compliance with the procurement and payment authorization requirements of Montgomery County Code and regulations;
 - review of all other contracts for which this Contract Administrator was responsible to ensure those contracts were administered in compliance with contract terms and applicable State and County laws and regulations;
 - review of how arborist inspection services are provided to determine whether it might be more cost effective to in-source that activity to a County employee.
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Finding 2 Complainant removed from the County contract for reporting what he believed to waste and mismanagement by Contract Administrator

- From April 10 through May 24, 2012, Complainant provided inspection reports to contractor and MCDOT documenting exceptions to contract specifications.
 - The Complainant raised legitimate concerns about the Contract Administrator with the OIG and with Complainant's employer, the Arborist contractor, in writing on June 7, 2012.
 - The Arborist contractor reported those allegations to the Contract Administrator on June 12, 2012. On the morning of June 13, 2012, the Contract Administrator sent an e-mail to the Arborist contractor stating: "we no longer need the services of arborist [Complainant]." The Arborist contractor terminated its employment of the Complainant later that day.
 - Division Chief normally would have sought out an employee's side of the story but admitted that he had never spoken with the Complainant.
 - A Maryland DLLR Hearing Examiner concluded that the Complainant's employer had offered insufficient evidence of any acts of misconduct by the Complainant.
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Recommendation – Finding 2

We recommended that MCDOT consult the County Attorney and Chief Administrative Officer to determine appropriate administrative actions.

Montgomery County Code Section 11B-35A

- b) *Policy.* A covered employee [*an employee of a contractor or subcontractor that performs or performed services under a contract subject to Sec. 11B-35A of the code*] must not be subjected to a personnel action by the Employer for disclosing, to a County official or employee, information involving the solicitation, award, administration, or performance of any contract that the employee reasonably believes is:
- (1) an abuse of authority, gross mismanagement, or gross waste of money;
 - (2) a substantial and specific danger to public health or safety; or
 - (3) a violation of law.
- (c) Each contract must:
- (1) prohibit retaliation by the Employer against a covered employee who discloses any illegal or improper action described in subsection (b)
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Chief Administrative Officer's Response:

- indicates agreement with all of our recommendations,
 - acknowledged improvement in contract administration and enforcement is necessary,
 - indicated MCDOT's Director has begun to take some corrective actions and make other improvements in response to the report's findings and recommendations,
- included a list of points regarding the report's findings he believed should be clarified or corrected.

We considered each of the CAO's points and made adjustments we considered appropriate in the final report, but also expressed that we did not agree with several of the comments.

