



OFFICE OF THE INSPECTOR GENERAL

Montgomery County, Maryland



MEMORANDUM OF INVESTIGATION

TO: Dr. Thomas W. Taylor
Superintendent of Schools

FROM: Megan Davey Limarzi, Esq.
Inspector General *ML*

DATE: July 25, 2024

SUBJECT: Investigation of MCPS' Management of the Electric Bus Contract

The Office of the Inspector General (OIG) recently concluded an investigation into Montgomery County Public Schools' (MCPS) management of a contract valued at over \$160 million to acquire and operate 326 electric school buses. The investigation substantiated that all of the buses received during fiscal years (FYs) 2022-2024 were delivered beyond the contractually required delivery date. We note that the contractor has notified MCPS that they will not be able to deliver the full complement of buses expected in FY2025. We also found that mechanical failures with many electric buses rendered them inoperable for extended periods and that MCPS did not exercise contract provisions to force the contractor into compliance or penalize them for noncompliance. We estimate that, in addition to other possible actions, MCPS should have assessed the contractor approximately \$372,000 for failing to provide serviceable buses between FYs 2022 and 2024. Furthermore, MCPS is spending over \$14 million to acquire diesel buses to compensate for not receiving the anticipated electric school buses.

Background

On February 23, 2021, as part of its commitment to sustainability, MCPS announced it was replacing 326 diesel school buses with electric school buses. The Montgomery County Board of Education (BOE) approved the acquisition including all associated charging infrastructure, charge management, electric, and related maintenance expenses totaling \$168,684,990.

On March 1, 2021, MCPS entered into a transportation services agreement (Agreement) with a contractor to deploy the 326 electric school buses, 108 of which were to be electric special education buses, over a four-year period and continue to provide maintenance support over a twelve-year period. The contract required buses to be delivered by August 1st of each contracted fiscal year. Table 1 details the deployment schedule:

Table 1: Delivery Schedule Per Contract with Electric Bus Contractor

| Deliverable | FY2022 | FY2023 | FY2024 | FY2025 | TOTAL |
|-----------------------------|--------|-----------------|------------------|--------|-------|
| # Buses Due Under Agreement | 25 | 61 ¹ | 120 ² | 120 | 326 |

¹ Includes 54 electric special education buses.

² Includes an additional batch of 54 electric special education buses.

The agreement was structured to allow the contractor to retain ownership of the buses and simply provide their use as a service to MCPS. The agreement did not convey ownership of the buses or related equipment to MCPS. The base service fee for the use of the contractor's services is \$38,500 per electric school bus per year, plus a 2% increase for each subsequent year. The base service fee includes vehicle inspection, maintenance, and repair costs. The agreement includes provisions allowing MCPS to seek billing credits for expenses related to the repair of buses and assess fees for "downtime damages" for buses or charging systems being unavailable due to extended maintenance, repair, and charging system readiness issues. The agreement also includes a termination clause that permits MCPS to terminate the agreement if the contractor fails to fulfill its obligations.

In April of 2022, the State of Maryland passed the Climate Solutions Now Act of 2022, which aimed to reduce greenhouse gas emissions by 60%, expand the State's electric vehicle fleet, and help the Maryland economy reach net-zero emissions by 2045. The Act also requires that school buses purchased starting in FY2025 run exclusively on electric power, but the State has made waivers of the requirement available through an application process.

At a ribbon cutting ceremony in October of 2022, the then superintendent of schools claimed that when all 326 electric buses were procured, "we are going to be saving upwards of 6,500 gallons of diesel fuel per day, and immediately, this is going to cut costs by 50%." MCPS's webpage further states that the "school district is on track to have 326 electric school buses by 2025 and an entirely electric school bus fleet in 10 years. Replacing the diesel bus fleet with electric buses brings MCPS one step closer to our pledge of cutting greenhouse gas emissions by 80% by 2027 and 100% by 2035."

Due to the contractor not delivering the required electric school buses per the contracted timeframe, MCPS submitted a request to the BOE to purchase 90 diesel school buses at a cost of \$14,749,919. The BOE approved the request on October 12, 2023, in light of the anticipated electric bus shortfall. During the associated BOE hearing, MCPS' then chief operating officer stated that MCPS remains committed to the electrification of school buses but acknowledged a need to maintain a blended fleet of both diesel and electric vehicles going forward.

Applicable Law, Regulation, and Policy

1. MCPS Financial Manual
2. MCPS General Contract Articles
3. Transportation Equipment Services Agreement

Inquiry and Findings

Delivery of Buses

The contractor did not deliver any of the buses expected in FY2022 through FY2024 by August 1st as required by the agreement's delivery schedule (See Table 2). Our analysis shows that for the first 3 years of the agreement, the anticipated allotment of buses was not received until the third quarter (January 1 to March 31) of each fiscal year rather than the first quarter as required by the agreement.

Additionally, the contractor has notified MCPS that they will not be able to meet the delivery goal for the 2024-2025 school year. MCPS is negotiating with the contractor over the number and expected delivery of the remainder of the contracted buses. As of the writing of this report MCPS received 16 electric buses from the contractor in FY2025.

Table 2: Actual Number of Buses Received

| Deployment Schedule | FY2022 | FY2023 | FY2024 | FY2025 |
|--|--------|--------|--------|------------------|
| Total Buses Due | 25 | 61 | 120 | 120 ³ |
| Received by August 1 st | 0 | 0 | 0 | 16 |
| Received September 30 th (Q1) | 0 | 50 | 37 | 0 |
| Received by December 31 st (Q2) | 14 | 10 | 69 | 0 |
| Received by March 31 st (Q3) | 11 | 1 | 14 | 0 |
| Total Buses Received | 25 | 61 | 120 | 16 |

Despite the contractor failing to meet its obligations regarding the delivery of electric school buses within the specific period, MCPS opted not to exercise contract provisions to terminate the contract for the vendor’s failure to deliver the buses as required. MCPS has instead been working to amend the agreement to potentially extend delivery of the remaining 120 school buses into FY2027.

Unlike MCPS’ agreements to purchase diesel buses, the agreement between MCPS and the electric bus contractor does not include a provision that would allow MCPS to assess fees for late delivery of electric buses. If MCPS had followed the diesel bus agreement model, they could have assessed fees of more than \$1.8 million to offset incurred expenses related to late deliveries.

To make up for the shortfall of electric buses, MCPS is submitting extension requests to the Maryland State Department of Education (MSDE) to extend the lifespan of MCPS’ existing diesel buses⁴ and acquiring 90 diesel buses at a cost of \$14,749,919.

MCPS’ Financial Manual defines waste as “the extravagant, careless, or needless expenditure of MCPS funds, or the consumption of MCPS resources that results from deficient practices, systems, controls, or decisions.” MCPS’s failure to hold the contractor accountable to the terms of the contract and their decision not to include provisions to offset incurred expenses has led to millions of dollars in wasteful spending.

Maintenance of Buses

MCPS also did not assess the required fees per the agreement for mechanical failures. Mechanical and/or charging infrastructure issues resulted in buses not being able to run routes on more than 280 instances from February 10, 2022, through March 31, 2024. In more than 180 of those instances, repairs were not completed within the five working days (averaging 13 days per bus) allowed by the agreement before a fee equal to \$100 per bus per day would be assessed. The OIG confirmed that MCPS has never assessed the contractor any fees related to the

³ The agreement with the contractor stipulates that 120 buses are due in FY2025, but MCPS anticipates receiving 30 electric buses.

⁴ Under Maryland law, school bus vehicles may only be operated for 12 years unless certain requirements are met.

unavailability of electric buses due to mechanical or charging infrastructure issues. The OIG calculated that MCPS should have assessed the contractor \$372,100 in related fees.

During the OIG's interviews with members of MCPS management, none of them could explain why this fee was not assessed. Furthermore, the OIG learned that newly negotiated terms will likely eliminate the fee altogether in a future contract amendment.

Conclusion

We substantiated that MCPS did not receive 206 electric buses for which they contracted within the timeframe specified by the agreement. MCPS is actively negotiating with the contractor to determine the number and expected delivery of the remainder of the contracted buses; they have received only 16 buses thus far for FY2025. We also substantiated that MCPS did not assess more than \$372,000 in fees, as required by the agreement, related to buses not being available for five days or more from February 10, 2022 through March 31, 2024. Finally, we substantiated that MCPS' reluctance to enforce the terms of the agreement and failure to include penalties to offset incurred expenses has led to millions of dollars in wasteful spending and drastically hindered MCPS's ability to meet its environmental goals.

Please contact me with any questions, or a member of your staff can contact Deputy Frank da Rosa, Francisco.darosa@montgomerycountymd.gov, with any questions.

cc: Dr. Henry Johnson, MCPS Acting Chief of Staff