

Contract Monitoring in Montgomery County Government

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Contract monitoring is the process of ensuring that a vendor provides services or goods as specified in the contract. A jurisdiction's contract monitoring system is the structure, policies, and procedures used to ensure that the vendors meet their responsibilities and mitigates risk during all phases of the contract. This study responds to the Council's request to better understand the County Government's post award contract administration practices.

Contracting in Montgomery County. Montgomery County procures over \$1 billion dollars in goods and services across almost all departments. OLO decided to focus its review on the eight County departments that have the largest number of contracts, which together managed over 3,000 active contracts in FY19. Open solicitations accounted for 28% of these contracts, while the remaining types of contracts were evenly distributed by sourcing method.

Contract Administration in Montgomery County Government. While the Office of Procurement provides a central clearinghouse for all procurement in the County, the Using Departments have lead responsibility for initiating contracts, contract administration and performance monitoring. Each Using Department organizes its contract administration activities differently, depending on the staff available, the volume of contracts (number and dollar amount), the contracts' source selection methods, and the types of goods/services procured. The roles and responsibilities of contract administrators vary across and within departments, from staff who are solely responsible for administering/ monitoring contracts to program staff who administer contracts as a small part of their overall job duties. Most departments reported that their contract monitors are program staff who monitor contracts as one of several job duties.

County Department	Types of Contracts	Largest Type of Good/Services	Contract Administrative Structure
DHHS	All Types, Many RFP, Non-Competitive, Open Solicitation, Council Grants	Wide variety of goods and services across all Divisions	Contract Management Team supports program staff (contract monitors) in all Divisions; also involves Compliance Team, Fiscal Team, and Budget Team
Recreation	Majority Open Solicitations	Class instructors, transportation, officiating, and recreation equipment	Centralized in the Business Services Team, with support from program staff
DGS	All Types, but majority IFB, RFP, bridge contracts, and Council Grants	Facility maintenance, County vehicles, and vehicle maintenance	Centralized in the Office of Contract Management, with support from program staff
DOT	All Types, but majority IFBs and open solicitations	Road maintenance goods and services, snow removal, consulting, and engineering services	Decentralized within department; each Division manages contracts differently
DEP	All Types, But Majority RFP	Refuse collection and disposal	Centralized in Office of Deputy Director (Procurement Unit), with contract administrators in DEP Divisions; Division or Section Chiefs are significantly involved
MCFRS	All Types, but majority IFB and bridge contracts	Vehicle maintenance and equipment for staff	Procurement Section in Division of Fiscal Management supports program staff (contract administrators) in all Divisions
MCPD	All Types, but majority Non-competitive and bridge contracts	Equipment for staff and technology upgrades	Procurement Unit in Management and Budget Division supports program staff (contract administrators) in all Divisions
DHCA	Majority Competitive General Grants (Federal) and Council Grants	Streetscape improvement/landscaping and homebuyer education	Dependent upon Division (with program staff managing contracts), a majority of contracts managed by Grants Administration Section in the Finance Division

Contract Monitoring in Montgomery County Government. Contract administrators in Using Departments have the primary responsibility for monitoring a contractor's performance. Overall, departments use a mix of formal and informal practices to monitor vendor performance, based on the type and size of the contract and staff resources available, including:

- Clear contract language
- Site visits
- Documentation
- Requiring multiple levels of review for payment
- Coordination between central procurement teams and program staff
- Reliance on feedback

In recent years, some Using Departments have centralized the procurement function within the department, increasing management's role in contract administration and resulting in new contracting monitoring policies. Overall, OLO found that the eight departments reviewed deploy many of the best practices recommended by organizations of procurement and finance professionals. The one significant area OLO found that the County could improve in accordance with best practices is the lack of formal delegation of procurement authority.

Compliance Issues. All eight Using Departments report that compliance issues are rare, and that staff work informally and collaboratively with vendors to resolve issues when they occur. Using Departments identified a few cases where the Using Department and Procurement pursued a formal process for corrective action because the initial noncompliance resulted in an unsafe or the noncompliance continued after attempts to remediate the situation.

There were 56 contract terminations between FY16 and FY19 in the eight departments reviewed, with about three of every four contracts were terminated through mutual consent. The Departments of Health and Human Services and Recreation had the most terminations, with 21 and 22 terminations respectively. According to the Office of Procurement and the Using Departments, contracts are terminated for many different reasons. Some examples include: a vendor who no longer provides the services requested because they retired or moved out of the area; a vendor who was hired by the County or returned to work for the County; a new contract was executed with a vendor for same services; or a vendor let their insurance lapse. Staff report that only a few contracts were terminated because of performance issues.

Recommended Discussion Issues. The Council should discuss with the Executive Branch:

1. Please explain how the County's shared supervisory structure of the procurement system works in practice, particularly as it relates to assignment of the systems policy making and oversight functions.
2. Given the importance of public procurement systems keeping pace with changes how governments structure their service delivery arrangements, what strategies would the County Government propose to ensure the Council is kept apprised of outsourcing arrangements that are in place or under development in the Using Departments that raise the County's exposure to legal, financial or reputational risks?
3. The Baker Tilly report recommended that the County Government strengthen its delegation of procurement structure. Please provide an update on the status of this recommendation. As a best practice, some organizations rely on formal delegation of procurement authority documentation practices and they update this documentation on an annual basis. Others submit the documentation of this delegation of procurement authority to the Board for review and approval. Please provide your observations on the relevancy of either of these practices to the County Government's procurement system.

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Introduction

Local governments contract out services for a variety of reasons including cost reduction, improvement of service delivery, lack of in-house staff or expertise, and increased flexibility to meet changing community needs. As local communities contract out for an increasing number of goods and services, sound contract management has become an essential function.

Contract administration responsibilities cover the post award phase of a contract management system. Contract administrators work with vendors to manage the successful delivery of the purchased goods and services. Effective programs have practices in place to monitor and document the quality, quantity and timeliness and costs of goods and services received and promptly address vendor performance issues.

Montgomery County Government contracts for roughly \$1 billion in goods and services annually. It has a centralized purchasing system that operates under the supervision of the Chief Administrative Officer. The system is managed by the Director of the Office of Procurement who serves as the County Government's Chief Procurement Officer. The County Government's procurement regulations provide for the designation of contracting officers and formally recognize a role for contract administrators. Each department is responsible for the administration of its contracts.

This study responds to the Council's request to better understand the County Government's post award contract administration practices. Because contract administration practices make up part of a contract management system, OLO decided to focus its review on the eight County departments that have the largest number of contracts. This report describes how these eight County departments manage their vendor contracts. It focuses on how these departments organize the management of their contracts, how they monitor vendor performance to detect noncompliance and how they respond to instances of noncompliance. The report has five chapters organized as follows:

- **Chapter 1, Overview of County Government's Procurement System**, including the procurement process, roles and responsibilities, and management of contract performance and vendor issues;
- **Chapter 2, Department Profiles**, provides an overview of procurement policies and procedures in the eight County departments with the most contracts;
- **Chapter 3, Select Best Practices and Emerging Issues for Public Procurement Systems**, summarizes best practices for the management and monitoring of government contracting;
- **Chapter 4, Findings and Recommended Discussion Issues**; and
- **Chapter 5, Agency Comments**.

Methodology. To conduct this study, OLO gathered information through document and law/regulation reviews data analysis, and interviews with staff from Montgomery County Government. *For the data about different aspects of the procurement system, e.g., number and value of contracts by sourcing methods, number of vendors, encumbrances, OLO used a mix of data sourced from the Office of Procurement and the eight Using Departments. OLO did not reconcile the numbers since these data were only used to convey trends and patterns.*

OLO staff members Sue Richards and Kristen Latham completed this report with assistance from Stephanie Bryant and Kelli Robinson. OLO received a high level of cooperation from everyone involved in this study and appreciates the information and insights shared by all who participated:

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CHAPTER I. An Overview of the County Government's Procurement System

Procurement is the process of specifying a need and identifying a supplier; purchasing is the process of buying or acquiring a good or service; and contracts are the legal agreements that specify the goods or services to be delivered and the details of the purchase price and payment arrangements. Effective procurement and acquisition systems ensure that organizations acquire the goods or services they need at the best cost, in the right quantity, at the right time.

According to the Montgomery County Charter Section 313, the County is responsible for creating a "centralized system of purchasing and contracting for all goods and services used by the County" and that this system "shall be administered under the professional supervision of the Chief Administrative Officer subject to the direction of the County Executive."

The procurement system for Montgomery County Government structures the acquisition of goods and services for all MCG departments and offices. These "using departments" contract out for approximately \$1 billion of goods and services every year.¹ A detailed set of laws, directives and administrative procedures in the Montgomery County Code and the Code of Montgomery County Regulations determine the structure of the procurement system. Additional guidance is provided by a set of policies, procedures and templates established by the Office of Procurement.

This chapter provides an overview of the County Government's acquisition system in three parts:

- **Part A, the Procurement Process**, outlines key aspects of the County's acquisition system;
- **Part B, Procurement Process Roles and Responsibilities**, defines key actor roles in the procurement process;
- **Part C, Managing Contract Performance and Vendor Management Issues**, presents the process used to manage issues that arise during contract execution.

A. The Procurement Process

Each Department is responsible for determining the types of goods and services it needs to deliver its programs and deciding the mix of in-house staff and vendors these programs will use. OLO Report 2018-7 identified drivers for Using Departments' service contracting activities. As explained in the report,

When identifying a need for professional or non-professional services, department staff make an initial determination of whether existing staff and resources are available to fulfill the need, and if not, whether to fulfill the need via a contract with an outside vendor. If the determination is made to contract out, Executive Branch departments begin the procurement process.

OLO Report 2018-7 further showed the breadth and variety of MCG departments' use of contracts and outsourcing arrangements.² Using Departments use contracts for a variety of reasons including to

¹ A Using Department is a County Government department that seeks to purchase goods, services or construction.

² From October 2017 through January 2018, OLO met with department staff to understand this decision-making process. OLO found that staff consistently identified common reasons service contracts are used to meet program and department goals, summarized in Table 5. 31 §11B-14(a). OLO met with County departments who commit the most to contractual services: Department of Correction and Rehabilitation, Department of Finance, Fire and Rescue Service, Department of General Services, Department of Health and Human Services, Department of

maintain services when budgets are cut, to meet short term needs and to partner with community organizations.

If a Using Department decides to contract out, it must determine how to source the product or service, how to structure the bid process and the bid documents and how to draft the terms and conditions of the contract. A Using Department may consult with staff in the Office of Procurement during this process. Its procurement and contracting decisions must comply with an extensive set of rules, policies and procedures found in County procurement law and regulations that are summarized below.

County Procurement Law and Regulations. Chapter 11B of the Montgomery County Code contains the County's Procurement law. The law establishes a system for purchasing goods/services/construction and authorizes the County Executive to adopt regulations³ to implement the law. With some exceptions, the procurement law applies to every County Government purchase of goods, services, or construction.⁴

These laws and regulations are intended to provide several source selection methods to maximize competition. They are designed to generate responsive and responsible bids that, in turn, lead to cost-effective or best value contracts.

Exemptions from Procurement Laws and Regulations. County law exempts some County Government purchases from the County's procurement laws and regulations:⁵ These include:

- Procurements for the employees' retirement system;
- Obtaining the services of special legal counsel authorized in the Charter;
- Hiring an independent auditor under the Charter;
- Hiring an impasse neutral, mediator, or fact finder under a County collective bargaining law, under procedures approved by the Chief Administrative Officer;
- Buying copyrighted material and information under procedures approved by the Chief Administrative Officer for use by a public library;
- Buying electricity, natural gas, and compressed natural gas, under Executive Regulation;
- Buying goods or services for County-sponsored recreational activities where the purchase is made on behalf of a group of people who contributed funds to participate in the activity;
- Obtaining entertainment services;
- Obtaining the services of experts, consultants, and investigators by the County Attorney, whether in anticipation of litigation or in preparation for trial;
- Obtaining advertising services from media sources; and
- Any other procurement exempted from the procurement laws by another law.⁶

Housing and Community Affairs, Office of Human Resources, Department of Liquor Control, Department of Police, Department of Technology Services, and Department of Transportation.

³ See Code of Montgomery County Regulations §§ 11B.00.01.01 [hereinafter COMCOR].

⁴ Montgomery County Code § 11B-3 [hereinafter "MCC"].

⁵ See Appendix A for PMMD-148, which includes exemptions to Procurement regulation.

⁶ MCC § 11B-4(a).

Methods for Purchasing Goods and Services. With four exceptions, purchases in Montgomery County subject to the procurement laws and regulations require a written contract document.⁷ The exceptions are:

- Direct purchases (purchases for \$10,000 or less);
- Reimbursable purchases by Using Departments; and
- Emergency procurements.⁸

The Procurement law and regulations establish numerous methods for County purchases, referred to in the law as “source selection” methods.⁹ Some source selection methods involve competition – where the County solicits goods, services, or construction from more than one source – and some do not.¹⁰ Procurement regulations dictate when specific procurement methods must be used, along with the procedures required for each method including how to evaluate potential bidders/offerors. The following table summarizes the source selection methods available to County Government Using Departments.

Overview of Montgomery County Source Selection Methods

Source Selection Method	Dollar Threshold Requirements	Description
Direct Purchase	\$10,000 or less	An informal procurement of goods, services, or construction under the direct authority of the Using Department Head.
Mini-Contract	Above \$10,000 and Below \$100,000	A mini contract is used to obtain professional services (and non-professional services under special circumstances) via an informal solicitation process.
Small Purchase	Above \$10,000 and Below \$100,000	A small purchase is an informal solicitation for goods, construction or services initiated by a Using Department. The County must contact at least five randomly selected potential offerors and at least one of the potential offerors should be a minority owned business. Contract award must be based on price, responsiveness and responsibility.
Competitive Sealed Bidding – Invitation for Bid (IFB)	\$100,000 or more	IFBs request bids from vendors for construction, goods and non-professional services to provide the County an item or service identified in the IFB. IFBs must include specifications for items being purchased, criteria to evaluate bids, and all contractual provisions applicable to the purchase. Contract awards must be made to the lowest responsible and responsive bidder.

⁷ COMCOR § 11B.00.01.03.3.

⁸ Note that whenever practical, the Department making the Emergency Procurement should use contract documentation required for a mini-contract or small purchase.

⁹ MCC §§ 11B-9 to 11B-16; COMCOR § 11B.00.01.1.04.

¹⁰ See COMCOR § 11B.00.01.02.2.4.15

Overview of Montgomery County Source Selection Methods (Continued)

Competitive Sealed Proposals – Request for Proposals (RFP)	\$100,000 or more	RFPs request proposals from vendors to provide the County a specific service identified in the RFP. The RFP process balances quality and price to obtain the best value for the County. RFPs must contain factors for evaluation of the proposal and an explanation of the ranking of vendors. Evaluation factors must include factors related to the technical quality of the proposal or the ability of the vendor, or both, and includes price. At least 10% of the total points for all evaluation criteria must be assigned to price.
Abbreviated Formal Solicitation	\$200,000 or less	A method for obtaining competitive sealed bids or competitive sealed proposals by using an abbreviated formal solicitation process, when determined by the Director of the Office of Procurement, to be in the best interest of the County.
Bridge Contract	No specific limit	A bridge contract is a procurement for goods, services, or construction using an existing competitive contract with another public entity when the Director of the Office of Procurement determines that a bridge contract is in the best interests of the County. The contract must be for materially the same goods, services, or construction being provided by the other public entity at the same prices being charged the other public entity. The contract with the other public entity must have been awarded as a result of adequate competition as determined by the Director of the Office of Procurement.
Open Solicitation	No specific limit	Under an open solicitation, the County accepts applications for a contract on a continuing basis and awards a contract to each applicant who meets pre-established objective qualifications.
Public Entity Procurement	No specific limit	A public entity procurement is an agreement to acquire or use any goods, services, or construction with a public entity upon terms and conditions considered to be in the best interest of the County as determined by the Director. A public entity procurement does not require public solicitation, nor does it require justification as a non-competitive procurement.
Non-Competitive Contract	No specific limit	<p>The County may award a contract without competition if the CAO determines that contract award serves a public purpose and:</p> <ol style="list-style-type: none"> 1. Only one source exists that can meet County needs for the required goods, service, or construction (“sole source”); 2. The good or service required is in connection with potential or pending litigation, condemnation, or collective bargaining; 3. A proposed contractor or subcontractor has been specifically identified in a grant accepted by the County (“named in grant”); or 4. A proposed contractor has been identified in a grant or appropriation resolution approved by the Council (includes community grants).
Emergency Procurement	No specific limit	An emergency procurement is an informal procurement of goods, services, or construction necessitated by a threatened dangerous condition or a threatened imminent or unforeseen curtailment of an essential service or supply that will endanger or damage health, life or property and cannot be remedied through a normal procurement.

Source: OLO Report 2009-1 and Office of Procurement Website

B. Roles and Responsibilities for Procurement System

Using Departments. Lead responsibility for County Government's contract management operations is in all departments and offices.¹¹ County procurement law and regulations refer to these departments as "Using Departments." As briefly stated earlier, the Using department identifies contract needs for goods and services. Using department staff take the lead on developing a solicitation, determining the goods/services desired, the timing of the contract, and what type of contract would serve the department's needs.

After a bid award is made, the Using Department is responsible for overseeing the development of a contract with assistance from the Office of Procurement and County Attorney. After the contract is signed, the Using Department issues a notice to proceed and is responsible for ongoing management of the executed contract.

As the Using Department's representative, the contract administrator serves as a liaison between the County and the contractor. Other contract administrator responsibilities include:

- Giving direction to the contractor to ensure satisfactory and complete performance; monitoring and inspecting the contractor's performance to ensure the acceptability, timeliness and quality of goods and services; accepting or rejecting the contractor's performance and monitoring compliance with any MFD performance plan;
- Issuing notices to proceed; approving or rejecting invoices for payment; preparing required reports and serving as the records custodian for the contract; and
- Recommending contract modifications, renewals or extension and, if needed, furnishing timely written notice of a contractor's performance failures to the appropriate parties;

As reported in OLO Report 2018-7, in 2018, there were over 200 designated Contract Administrators in departments across the County that are part of the County's workforce.

Each Using Department establishes its own contract management organization and processes. Departments' organizational structures range from a team of contract administrators to one contract administrator for some departments. Some departments have staff designated to contract development, administration and management, while other departments have staff that develop and/or manage contracts along with their primary job responsibilities, in an 'other duties as assigned' capacity.

¹¹ An "internal service function" is a business or administrative activity that supports the overall operation of an organization. The County's Procurement system is one of several County Government internal service functions that bifurcates the authority and responsibility for a set of complex rules and tasks between a central department and multiple client departments. Other County Government internal service functions that situate enterprise wide authority with a central department and delegate operational authority to client departments include finance, budget, personnel, information technology and facilities management. In 2006, OLO examined how the County Government structured its personnel, information technology and procurement internal service functions at both the enterprise and the department levels. As OLO Report 2007-10 explained, the County Government's structures for each of its internal service functions varied in the degree to which decision-making authority was centralized or decentralized at the enterprise level. Centralized operations relied on standardization and the consolidation of equipment, processes, technology and management while decentralized operations distributed authority and control among department managers and staff.

The County Government's procurement regulations provide for the designation of a Using Department they formally recognize and define a role for a contract administrator. The roles of a contract manager or a contract monitor are determined in the Using Department but all go through contract administrators. In practice, Using Departments' staff who manage parts or all a department's contract portfolio work closely with a team of one or more contract administrators and/or contract monitors. See Chapter III for profiles of eight departments' contract management systems including details about how they organize the management of their contracts to align with their mission and programs.

Contract Monitoring. There is a close relationship between the structure of a contract and the resources and practices of an effective contract management system. According to Procurement staff, Using Departments use a variety of contract provisions to create effective monitoring and compliance structures. Departments that use competitive sealed invitations for bids (IFBs) or competitive sealed requests for proposals (RFPs) will often incorporate testing requirements or other provisions that assess a vendor's monitoring and reporting capacity into the bid process as well. Some examples of these techniques include the following:

- Incorporate a requirement in the bid solicitation for prospective vendors to perform a mock cleaning;
- Create service level agreements that specify acceptance testing requirements that mandate vendor responsiveness to issues upfront as the contract proceeds;
- Structure agreements that have an iterative cycle for acceptance testing that may differentiate between major or critical issues that must be resolved quickly, e.g. within one hour, versus minor issues that can be noted and left unresolved or resolved over a longer period;
- Structure contracts to incorporate incentives or disincentives for performance;
- Structure contracts to specify liquidated damages; and
- Structure contracts to provide for monitoring reports or site visits.

The Office of Procurement. Under the law, the Director of the Office of Procurement is the County's "central procurement officer," responsible for purchasing or supervising the purchase of all County goods, services, and construction, along with disposing of surplus goods.¹² Procurement's responsibilities encompass all parts of the County's procurement and acquisition system.

¹² MCC § 11B-6(a), (b).

Summary of Office of Procurement Responsibilities

Solicitation Phase of the Procurement Process

- Determines appropriate source selection method and contract requirements with Using Department.
- Determines whether vendor's bid is responsive and responsible for selected contracts and offers are acceptable.
- Makes formal determination on whether contract price is fair and reasonable.¹³
- Develops and maintains templates, policies and standard forms for procurement process participants (referred to PMMDs).¹⁴
- Reviews requirements for negotiations and awards.

Contract Management Process

- Reviews and executes contracts and administers contract changes, e.g. modifications, renewals and extensions.
- Provides training for contract monitors/administrators - each County contract administrator must take a six-class training course developed. The Office has also created Contract Administrators Forums.
- Reviews payroll submissions to ensure vendor compliance with the County's Wage Requirements Law and County's Prevailing wage law.¹⁵
- Form PMMD-15 is a standard contract monitoring report found in Procurement's online library of forms and documents. Procurement makes this form available for the Using Departments' use on a voluntary basis.
- Provides guidance to Using Departments about managing vendor performance (see below), including contract cures.

Certain County contracts must comply with additional requirements, set out in the procurement laws and regulations, when developing and executing contracts. Several of these requirements represent policy choices that are implemented through the County's procurement system. Specifically, the Office of Procurement has lead responsibility for the following requirements:

- Administers the County's Minority, Female and Disabled Persons Program (MFD) which requires the County Government to purchase a percentage of its goods, services, and construction for contracts \$50,000 and over from minority-owned businesses.¹⁶
- Administers the County's Local Small Business Program (LSBRP) Requirements which requires Using Departments to award at least 20 percent of their procurements to local small businesses.¹⁷
- Provides support for the Contract Review Committee (CRC), which reviews and evaluates certain procurement actions.
- Completes annual reports: Record of Procurement, Wage Requirements Law, Minority, Female and Disabled Program, Local Small Business Reserve Program, and the Recycle Report.

¹³ COMCOR § 11B.00.01.10.10.1.

¹⁴ PMMD stands for "Purchasing and Materials Management Division" and refers to the time when the Office of Procurement was a division of the Office of Management and Budget.

¹⁵ County procurement law MCC § 11B-33A(e) requires contractors and subcontractors to pay employees providing direct measurable work for services to the County. The wage rate is adjusted annually according to the Consumer Price Index. The wage rate that is in effect from July 1, 2016 through June 30, 2017 is \$14.40 per hour. County procurement requires that the prevailing wage be paid to workers on County financed construction contracts; the prevailing wage rate is the rate paid for comparable work in the private section within the County, determined annually by the State of Maryland.

¹⁶ MCC §§ 11B-57 to 11B-64; COMCOR §§ 11B.00.01.07.7.1 to 11B.00.01.07.7.10.

¹⁷ MCC § 11B-66.

Other Departments. The design of the County Government’s acquisition and procurement system connects a set of purchasing and contract management responsibilities administered by staff in each Using Department with a set of enterprise-wide supervisory responsibilities that are carried out by staff in the Offices of Procurement, Management and Budget and the County Attorney and in the Department of Finance. This distributed system is expected to operate effectively at multiple levels.

- At the **enterprise wide level**, the system is designed to implement a mix of public policies such as ensuring fair bids and competitive procurements or ensuring contracting opportunities for small, minority and local County businesses.
- At the **organizational level**, the system is expected to support the contracting activities and outsourcing arrangements that departments need to accomplish their missions while also ensuring compliance with the County Government’s laws, policies and regulations.
- At the **transactional or activity level**, the system is designed to ensure that County Government departments are contracting with responsive and responsible vendors, that the contract documents are legal and enforceable and that the payment transactions comply with the terms and conditions of the contract.

Three County Government departments support Using Department staff with duties related to discrete activities that are part of these procurement and acquisition systems.

Department of Finance. Staff in two separate divisions in the Department of Finance support Using Department contracting activities. Staff in the Division of Risk Management are responsible for overseeing contractor insurance requirements both before and after the contract is executed. Staff in the Accounts Payable Section of the Controller Division are responsible for processing payments.

Office of Management and Budget. The Office of Management and Budget is tasked with, at the request of the Using Department, ensuring that there are sufficient funds in the department’s budget to cover the cost of the contract prior to submitting a solicitation package to the Office of Procurement.

Office of the County Attorney. The Office of the County Attorney (OCA) reviews and approves contract documents for form and legality, including contracts drafted by Using Departments during and/or after the negotiation phase of the process. The OCA may also provide guidance when a vendor is noncompliant and must sign off on any contract termination whether it is a termination by mutual consent or termination for default.

C. Managing Contract Performance and Vendor Management Issues

Section 11B.00.01.12 of the Procurement Regulations and the Office of Procurement *Procurement Guide* address contract terminations. County law and policies authorize Using Department staff to undertake efforts to resolve contract performance issues informally. If these efforts are unsuccessful, contract administrators will utilize more formal options to address contract performance issues. This section summarizes that process.

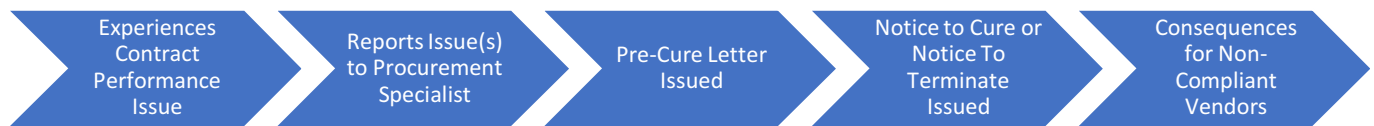
Procurement is available to advise Using Departments about their options for addressing contract performance and vendor management issues. A Procurement Specialist generally hears from a Using

Department's contract administrator about these issues. The issues typically include missed deliveries or other performance related concerns.

When a Procurement Specialist is first contacted, their goal is to assess the nature of the concern and clarify the extent of the missed performance. They will ask a contract administrator about the specifics of the issue and whether they have information to document the lack of performance. The Specialist must verify that the contract administrator has the correct understanding of the contract terms and is not raising an issue about a performance expectation that is not specified in the contract. The Specialist must also rule out issues of unequal treatment and assess that the concern rises to the level of legal noncompliance with the terms of the contract.

The Specialist may also remind the contract administrator not to pay for services that have not been delivered. They advise them to communicate with the vendor to convey the concern and to follow-up with a letter or meeting to attempt to resolve the issue informally.

Process for Managing Contract Issues



Experiences Contract Performance Issue. County law and policies authorize Using Department staff to undertake efforts to resolve contract performance issues informally. Procurement is available to advise Using Departments about their options for addressing contract performance and vendor management issues. A Procurement Specialist generally hears from a Using Department's contract administrator about these issues. The issues typically include missed deliveries or other performance related concerns.

Reports Issues to Procurement Specialist. When a Procurement Specialist is first contacted, their goal is to assess the nature of the concern and clarify the extent of the missed performance. They will ask a contract administrator about the specifics of the issue and whether they have information to document the lack of performance. The Specialist must verify that the contract administrator has the correct understanding of the contract terms and is not raising an issue about a performance expectation that is not specified in the contract. The Specialist must also rule out issues of unequal treatment and assess that the concern rises to the level of legal noncompliance with the terms of the contract.

The Specialist may also remind the contract administrator not to pay for services that have not been delivered. They advise them to communicate with the vendor to convey the concern and to follow-up with a letter or meeting to attempt to resolve the issue informally. This is known as the pre-cure letter.

Pre-Cure Letter Issued. If these efforts are unsuccessful, contract administrators have the authority to send "pre-cure" letters without seeking approval from Procurement. When a Using Department sends a pre-cure letter, some will notify Procurement when they send a pre-cure letter while others will not. Either Procurement or the Office of the County Attorney may advise smaller Using Departments with limited contract management capacity on their pre-cure letter.

Notice to Cure or Notice to Terminate Issued. If a Using Department's efforts to resolve an issue informally are not successful, it can trigger a response from Procurement to explore follow-up steps to bring the vendor into compliance. These options typically include a notice to cure or a notice to terminate. Although a notice to cure typically provides a 10-day period for the contractor to respond, the procurement regulations include a provision that authorizes Procurement to request an immediate response if life safety issues are present.

The regulations also provide the flexibility to issue a Notice to Cure that automatically becomes a Notice to Terminate or to move directly to the issuance of a Notice to Terminate. depending on the circumstances, Procurement may work with the Using Department to explore the pros and cons of different options.

Before it considers how to move forward, Procurement will ask the Using Department to provide:

- Documentation to show the pattern of missed deliveries or nonperformance and the impact of the performance shortfall; and
- A service backup plan that addresses how the Using Department would address issues that would arise if a Notice to Cure led to a Notice to Terminate.

Procurement staff state that because service impacts vary, Procurement will vary its use of cure notices as well. Procurement also states that vendors with local small business contracts may add another layer of complexity because issuance of a cure notice can raise questions about whether the County could be providing technical assistance as part of its Notice to Cure process.

Consequences for Non-Compliant Vendors. As supervisor of the County's purchasing system, Procurement maintains a database of contractors that receive notices to cure or notices to terminate and of vendors that have been disbarred. In general, County policy as established by the Contract Review Committee (CRC) is that a notice to terminate does not automatically prevent contractors from bidding on a subsequent solicitation. This policy recognizes that as time passes, a vendor's business capacity can change as well. The County's policy is to disbar contractors found guilty of criminal activity.

CHAPTER II. Department Profiles

To respond to the Council's request for a better understanding of County Government contract administration practices, this chapter provides a detailed summary of the contract administration and monitoring practices in eight County departments, listed below. OLO selected these departments because they manage the greatest number of contracts.

Best practices suggest that contract management falls along a continuum, based on the nature of the goods or services a contractor provides and the terms of the contract. These departments provide a diverse set of services. They rely on different mixes of contract types and the ways they make use of contractors to arrange the delivery of their programs and services varies widely as well. Despite these differences, the size, scope and value of each department's contract portfolio suggest that vigilant oversight by department staff is crucial to the successful delivery of County programs.

An in-depth review of each department's contract portfolio that could fully describe a continuum of County Government contract management responsibilities across these eight departments was beyond the scope of this study. Instead, OLO supplemented the descriptions of each department's contract management system with two tables of information about the volume and types of contracts it manages by sourcing method and with data and details about a department's recent contract terminations.

The first table in each profile presents Office of Procurement data for the total number of contracts under management and the dollars encumbered for purchases for the last three fiscal years.

OLO then used the same contract data by sourcing method to calculate the number and value of a department's purchases that were made using informal sourcing methods versus those that used formal methods. For purchases that used formal sourcing methods, OLO also calculated the number and value of purchases that were competitively sourced, i.e., using an IFB or RFP, versus those that were sourced through another method, e.g. a public entity procurement, an open solicitation or a noncompetitive procurement.

The second table in each profile displays these data in three tiers:

- **Tier I** shows the data for purchases that were informally sourced and valued at \$100K or less.
- **Tier II** shows the data for purchases that were competitively bid, as either IFBs or RFPs and valued at \$100K or more. These methods can include purchases and acquisitions with more complex contract terms and conditions and many of these acquisitions result in contracts that authorize long term service delivery arrangements contracts that longer term contracts.
- **Tier III** shows the data for purchases that were sourced through bridge contracts, open solicitations, public entity procurements and non-competitive contracts.

The differences in the distributions of the departments' contracts by sourcing method by volume and value provide some indicators of the unique make up of each department's contract portfolio. For example, while informal solicitations represent less than 5% of the value of any department's portfolio, they account for roughly 15% of the contracts that are managed. Similarly, when a department has a

significant percentage of its portfolio (by volume or value) sourced through a sealed bid, it is more likely to have some contracts that have complex terms and conditions that require a higher level of contract management.

Department	Page
Department of Environmental Protection	16
Montgomery County Fire and Rescue Services	20
Department of General Services	24
Department of Health and Human Service	28
Department of Housing and Community Affairs	37
Montgomery County Police Department	42
Department of Recreation	46
Department of Transportation	51

Each profile also provides information about the number of contracts a department terminated between FY16 and FY18. OLO found no evidence that a specific type or value of contract resulted in non-compliance more than any other. Instead, the profiles show that departments use contract terminations as a last resort to resolve issues of noncompliance, after they had exhausted informal methods.

1. Department of Environmental Protection (DEP)

The Department of Environmental Protection administers solid waste services, watershed management and other environmental programs. DEP has an approved FY20 operating budget of \$147.7M and a workforce of 216.11 FTEs.¹⁸ Operating expenses account for nearly 63% of DEP's budget.

A. DEP's Portfolio of Active Contracts

DEP manages a portfolio of 148 contracts with a mix of public entities and private firms, including:

- Three large public entity contracts, including a \$26M contract with the Northeast Maryland Waste Disposal Authority to manage the County's Materials Resource Recovery Facility (MRRF) and the Transfer Station; a \$6M contract with Maryland Environmental Services (MES) to manage leachate and gas from two closed County landfills and a second \$4M contract with MES to operate the County's yard trim composting facility.
- Four large contracts that were initially awarded through RFP solicitations. These include contracts with two vendors that provide refuse and recycling and other trash collection services and a third vendor that hauls trash out of County.
- Contracts for the design, build, and/or maintenance of stormwater management facilities.

The table shows that DEP encumbered \$92.6M for contracting services in FY19, including \$45.7M for contracts with public entities and \$41.1M for contracts awarded through RFPs.

DEP's Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Method

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	23	\$263,492	\$288,573	\$223,545
Invitation for Bid Contracts	12	\$6,020,496	\$649,617	\$646,733
Request for Proposal Contracts	71	\$56,007,512	\$31,169,794	\$41,094,611
Bridge Contracts	17	\$645,582	\$969,128	\$882,465
Non-Competitive Contracts	15	\$388,705	\$385,643	\$245,503
Public Entity Contracts	10	\$37,138,186	\$13,541,852	\$45,749,926
GRAND TOTAL	148	\$100,463,973	\$48,843,754	\$92,632,822

Source: OLO and Office of Procurement, December 2019.

¹⁸ Includes Operating Budget of DEP and Solid Waste Services, which are reported separately in the County Budget. It also includes 60 FTEs provided to organizations other than DEP.

The table below shows DEP's contracts arrayed into three broad groups by sourcing method, contract value and degree of competitiveness. The distribution by the number of contracts shows that contracts in Tier II, i.e., those that resulted from competitive solicitations with a threshold of \$100,000 or more, and in Tier III, contracts sourced through bridge arrangements or noncompetitively with no cost thresholds, account for about 84% of DEP's portfolio. By dollar value, encumbrances of DEP's Tier II contracts accounted for 47% of all FY19 encumbrances, compared to encumbrances for Tier III contracts at 53%.

Active DEP Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			%	% Distribution Encumbered Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	23	\$263,492	\$288,573	\$223,545	16%	0%	1%	0%
Tier II – Sealed Bids over \$100K	83	\$62,028,008	\$31,819,411	\$41,741,344	56%	62%	68%	47%
Tier III – No Cost Thresholds	42	\$38,172,473	\$14,896,623	\$46,877,894	28%	38%	32%	53%
TOTALS	148	\$100,463,973	\$47,004,607	\$88,842,783	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. DEP's Contract Management Structure

In 2019, DEP completed consolidation of its contract management responsibilities for the County's Material Resource Recovery Facility and the Transfer Station with its other contracts for non-solid waste activities. As a result, DEP's management of its procurement functions are currently centralized in the Office of the Deputy Director.

However, DEP's contract management functions are divided among three entities: the Procurement Unit in the Office of the Deputy Director, DEP Division and Section Chiefs, and contract monitors (usually front-line staff).

The Procurement Unit, which reports to the Deputy Director, consists of an Administrative Specialist III and three additional staff. The Unit works with the Office of Procurement and supports DEP division staff throughout the entire procurement process. Examples of the Unit's support include serving as a resource for division staff that are managing solicitations to ensure consistency with Procurement regulations, providing advice and guidance on drafting the terms and conditions of a contract and developing a library of templates and instructions.

DEP assigns contract administration responsibilities to DEP Division or Section Chiefs and it assigns contract monitoring responsibilities to program staff. DEP also requires that each contractor invoice undergo at least two levels of review to ensure verification that work was completed in accordance with the scope in the contract and to ensure separation of functions. In practice, DEP's Deputy Director states that the norm is three levels of review for most invoices. The table below summarizes the contract management roles and responsibilities of the various DEP entities.

DEP's Contract Management Structure

Role	Duties Include
DEP Deputy Director	<ul style="list-style-type: none"> • Provides oversight of Procurement Unit and contract management by the Division Chiefs. • Approves vast majority of procurement actions forwarded from the Procurement Unit to the Office of Procurement.
Procurement Unit in the Office of the Deputy Director	<ul style="list-style-type: none"> • Collaborates with DEP Division Chiefs, Section Chiefs, and contract monitors on processing of solicitations, drafting of contract language, invoice review and approval and processing of all contract actions. • Provides assistance to DEP Division staff on County procurement processes, including development of templates and instructions and training to supplement trainings offered by the Office of Procurement. • Works with contract monitors to furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement and to the County Attorney, as appropriate. • Maintains an Official Contract File with purchase orders, contracts, amendments, invoices, correspondence, monitoring notes and other pertinent documents. • Meets periodically with Service Area's Contract Monitors to identify any contract issues. • Works with Contract Monitors to ensure language in draft solicitations and language in contracts is clear and responsive to DEP's policies and procedures.
DEP Division and Section Chiefs	<ul style="list-style-type: none"> • Serves as contract administrators for all contracts. • Reviews all contract invoices before payment.
Contract Monitors (in DEP Divisions)	<ul style="list-style-type: none"> • Serves as liaison between the County and contractor. • Conducts site visits and submits at least one Monitoring Review Form/Report per contract annually. • Addresses unacceptable contractor performance and, if needed, work with the DEP Procurement Unit, the Offices of Procurement, and the County Attorney and other parties as needed to institute formal corrective actions for any material deficient performance issue with contractors. • Receives and reviews contractor reports, invoices and backup documentation. • Signs and submits invoices with supporting documentation to initiate the invoice payment process. • Monitors and tracks contract expenditures and notify contractors at risk of overspending. • Drafts scopes of service, reporting requirements, performance measures, payment schedules, etc. for new contracts and amendments and similar parts of initial drafts of solicitations.

Source: OLO and DEP

C. DEP's Contract Monitoring Practices and Standards

According to DEP's Deputy Director, DEP follows three general contract development practices to establish the underlying structure for its contract monitoring practices and standards. These practices are reinforced through Procurement Team review of contract documents prior to approval for submission to the Office of Procurement. They are:

- **Ensure that the contract language is clear** regarding the scope of services, the timing of the services or deliverables and the requirements for vendor reports;
- **Establish milestones and other opportunities to manage performance** throughout the life of the contract; and
- **Ensure that the contract incorporates contractor documentation** requirements, such as progress reports.

Contract Compliance Issues and Terminations. The Department of Environmental Protection did not terminate any contracts (for default or by mutual consent) from FY16-FY18.

How DEP Staff Work to Resolve Contract Issues. During FY15, DEP had significant issues with a contractor that supplies residential solid waste collection services. In 2011, the County awarded residential solid waste collection services to three providers, each for a seven-year period. After several years, one of those providers had been experiencing significant challenges, including missed collections of yard waste and scrap metal (and to a lesser extent, recyclables). Trash collections have for the most part not been impacted. The contractor was not able to provide sufficient crews to cover existing routes.

In order to address this situation, DEP worked with the Office of Procurement, County Executive Office, and other local jurisdictions to address the issues associated with the services not being provided. These actions included:

- County staff worked with the contractor to address individual residential complaints;
- The contract with the vendor was amended to limit the scope of work required and the length of the contract;
- The County awarded emergency contracts with two companies to provide residential collection services for trash, yard trim, scrap metal and bulk items in affected areas; and
- The County entered into short-term agreements with a small collection contractor and the City of Rockville to assist with the backlog of yard trim collection services.

2. Montgomery County Fire and Rescue Service (MCFRS)

The Montgomery County Fire and Rescue Service (MCFRS) has a FY20 Operating Budget of \$223.25M and a staff of 1,318 FTEs. MCFRS' five programs include the Operations Division, Support Services Division, the Human Resources Division, the Fiscal Management Division and the Volunteer Services Division.

A. MCFRS Portfolio of Active Contracts

MCFRS manages a portfolio of 122 contracts with 78 different vendors. According to the Chief of the Division of Fiscal Management, MCFRS' portfolio of contracts is diverse. Examples of goods and services that MCFRS acquires through contracts include:

- The purchase, maintenance and fueling of its vehicles;
- The equipping and outfitting of firefighters, including contracts for radio equipment, cell phone service, uniform cleaning and for self-contained breathing apparatus equipment;
- The equipping and maintenance of firehouse stations owned by local volunteer fire departments (LFRDs), including contracts for landscaping, snow removal, HVAC and electrical services, and for appliance repair services;¹⁹ and
- Instruction services for training firefighters through the Public Services Training Academy, insurance broker services and the expense collection system for the Emergency Services fee.

The next table shows MCFRS encumbered \$7.9M for contracts in FY19, including \$3.86M for 29 bridge contracts, \$2.18M for 44 invitation for bid contracts and \$1.1M for 19 non-competitive contracts.

¹⁹ MCFRS and the Department of General Services (DGS) share maintenance responsibilities for County firehouses. DGS is responsible for fire stations that are owned by Montgomery County and MCFRS maintains the others. According to MCFRS staff, before the Great Recession, the LFRD's managed their own service contracts; however, these activities were assigned to MCFRS as a cost saving measure.

MCFRS' Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Group

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	20	\$208,495	\$259,710	\$240,706
Invitation for Bid Contracts	44	\$1,360,541	\$1,220,719	\$2,175,964
Request for Proposal Contracts	8	\$385,040	\$464,180	\$481,848
Bridge Contracts	29	\$9,933,560	\$16,353,911	\$3,860,499
Non-Competitive Contracts	19	\$1,808,116	\$1,123,968	\$1,115,414
Public Entity Contracts	2	\$49,999	\$30,000	\$35,000
GRAND TOTAL	122	\$13,745,751	\$19,452,488	\$7,909,431

Source: OLO and Office of Procurement, December 2019.

The table below shows MCFRS' contracts arrayed into three broad groups by sourcing method and contract value. The distribution of MCFRS' contracts show contract awards of \$100,000 or more are fairly evenly split between contracts in Tier II that resulted from competitive sealed bids (52) and those in Tier III that were sourced through a public entity or non-competitive contract (50). By dollar value, Tier III contracts accounted for 63% of FY19 encumbrances.

Active MCFRS Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			% Contracts	% Distribution Enc. Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	20	\$208,495	\$259,710	\$240,706	16%	2%	1%	3%
Tier II – Sealed Bids over \$100K	52	\$1,745,581	\$1,684,899	\$2,657,812	43%	13%	9%	34%
Tier III – No Cost Thresholds	50	\$11,791,675	\$17,507,879	\$5,010,913	41%	86%	90%	63%
TOTAL	122	\$13,745,751	\$19,452,488	\$7,909,431	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. MCFRS's Contract Management Structure

The Fire Chief has the ultimate responsibility for the overall management, direction, planning and coordination of all MCFRS programs and operations, including its procurement functions. Responsibilities for MCFRS' procurement system are divided among staff in each of MCFRS' divisions and staff in the Procurement Section of MCFRS' Division of Fiscal Management. Specifically:

- **MCFRS division managers and staff** are responsible for: specifying the goods and services they need, accepting delivery of goods and services and ensuring their acceptability, monitoring contracts, receiving, reviewing and approving vendor invoices and any supporting documentation and forwarding approved invoices to the Procurement Section for payment.
- **The Procurement Section in MCFRS' Division of Fiscal Management** provides in-house procurement expertise, advice and assistance.²⁰ It is responsible for developing and administering MCFRS contracts, including entering and approving payments and purchase orders that are forwarded from other MCFRS Divisions. This Section also coordinates and oversees MCFRS' purchasing card accounts.

MCFRS' Contract Management Structure

Role	Duties Include
Fire Chief	<ul style="list-style-type: none"> • Responsible for the overall management, direction, planning and coordination of MCFRS programs and operations, including its procurement functions.
Procurement Section in Division of Fiscal Management	<ul style="list-style-type: none"> • Serves as source of in-house procurement expertise and advises and assists with acquisition of all MCFRS' goods and services. • Advises Division staff on how to work various MCFRS vendors to address service needs. • Enters and approves payments and purchase orders forwarded from MCFRS Divisions. • If needed, work with the division staff, the Offices of Procurement and the County Attorney and other parties to institute formal corrective actions for any material deficient performance issue with contractors. • Coordinates and oversees MCFRS' purchasing card accounts. • Working on development of an asset database.

²⁰ Division of Fiscal Management is responsible for contract management and development for MCFRS in addition to its other responsibilities which include the overall management of the MCFRS operating budget, the management and administration of State and Federal funding, management oversight of the EMS reimbursement program and management of accounts payable and accounts receivable.

**MCFRS
Divisions**

- Serve as liaison between the County and contractor.
- Meet contractors on-site to verify and sign off on work specifications and quality.
- Receive, review and approve vendor invoices, reports and backup documentation.
- Forward approved vendor invoices to Procurement Section for payment.
- Responsible for initiating action to address unacceptable contractor performance.
- If needed, work with the MCFRS Procurement Section, the Offices of Procurement and the County Attorney and other parties to institute formal corrective actions for any material deficient performance issue with contractors.
- Draft scopes of service, reporting requirements, performance measures, payment schedules, etc. for new contracts and amendments and similar parts of initial drafts of solicitations.
- Responsible for maintaining Official Contract Files with purchase orders, contracts, amendments, invoices, correspondence, monitoring notes and other pertinent documents.

Source: OLO and MCFRS.

C. MCFRS's Contract Monitoring Practices and Standards

Division staff are primarily responsible for the monitoring of all contracts and the payments of invoices. Many services that vendors provide to MCFRS are for discrete tasks or goods that are monitored through inspections at point of service and invoice review. In 2012, an Internal Auditor review of MCFRS' contracts reported that MCFRS had written guidance on invoice review and approval practices in place.²¹ The Auditor also stated that MCFRS had recently issued guidelines that required staff and contract administrators to institute a three-way match process before a contract administrator approved an invoice for payment. MCFRS reports that these guidelines are still in effect today.

MCFRS staff state they have also seen an increase in the demand for various contracted repair services at the fire houses, which may not be fully monitored. Staff shortages in the Facilities Section can make it difficult to monitor every repair on-site but that staff are sent out for major repairs.

Contract Compliance Issues and Terminations. MCFRS staff report that incidents of vendor performance issues are rare. Between FY16 and FY18, the Department terminated two contracts - one for default and one by mutual consent. The contract terminated for default was a result of the vendor not delivering required goods and not being in good standing with the State of Maryland. The contract terminated by mutual consent was done at the request of the vendor. More recently, MCFRS had a significant issue with a fuel delivery contract; however, while the fuel was delivered to fire stations, the contract was with the Department of General Services. See DGS' profile, on the following page, for a summary of the issue.

²¹ MCIA 13-4 tested eight MCFRS contracts for seven contract monitoring and administration attributes. It found contract monitoring issues with two of the eight contracts. In one case, a vendor had not been subjected to a background check as required by the contract. In a second case, the auditor reported that delivery of equipment that had been ordered in July 2011 was not delivered until December 2012.

3. Department of General Services (DGS)

The Department of General Services has a FY20 Operating Budget of \$40.3M and 169 FTEs. The Department has two divisions that manage six major program areas. The Operations Office administers the day to day operations of the department, directing the functional areas of central administration, facilities management and fleet services. The Capital Projects Office administers an array of capital projects, real estate management and public private partnership initiatives.

1. General Services' Portfolio of Active Contracts

The Department of General Services manages a portfolio of 645 contracts and works with over 400 vendors. The next table shows General Services encumbered \$191.9M for contracts in FY19, including \$83.9M for 117 Request for Proposal (RFP) contracts, \$51.9M for 285 Invitation for Bid (IFB) contracts and \$29.2M for 28 Non-Competitive Contracts.

DGS's Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Group

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	18	\$211,880	\$123,482	\$121,093
Invitation for Bid Contracts	285	\$93,432,379	\$36,332,201	\$51,795,746
Request for Proposal Contracts	117	\$66,602,974	\$64,556,052	\$83,852,519
Bridge Contracts	84	\$21,113,790	\$16,442,472	\$22,053,097
Joint-Cooperative	2	\$6,790,439	\$6,691,925	\$0
Non-Competitive Contracts	28	\$3,332,163	\$6,548,909	\$29,167,503
Public Entity Contracts	2	\$14,500	\$4,695,805	\$14,500
Subtotal	537	\$191,498,125	\$135,390,846	\$187,038,130
Non-Competitive Council Resolution Contracts	108	\$2,930,836	\$2,438,498	\$4,835,227
GRAND TOTAL	645	\$194,428,961	\$137,829,344	\$191,873,357

Source: OLO and Office of Procurement, December 2019.

The table below shows DGS's contracts arrayed into three broad groups by sourcing method, contract value and degree of competitiveness. For the number of contract awards, the distribution shows that 402 contracts (62%) were valued over \$100K and awarded competitively (Tier II) and 225 (35%) with no cost threshold were awarded as bridge, public entity or non-competitive contracts (Tier III). The distribution by dollars encumbered in FY19 shows 71% of funds encumbered were for competitive contracts (Tier II) and 29% were for bridge, public entity or non-competitive contracts (Tier III).

Active DGS Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			%	% Distribution Encumbered Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	18	\$211,880	\$123,482	\$154,765	3%	0%	0%	0%
Tier II – Sealed Bids over \$100K	402	\$160,035,353	\$100,888,253	\$135,648,265	62%	82%	73%	71%
Tier III – No Cost Thresholds	225	\$34,181,728	\$36,817,609	\$56,070,327	35%	18%	27%	29%
TOTALS	645	\$194,428,961	\$137,829,344	\$191,873,357	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

2. Department of General Services Contract Management Structure

Contract management responsibilities for DGS' contracting activities are centralized in the Office of Contract Management (OCM). The unit has a Manager and four positions. The OCM Manager reports to DGS's Chief Operating Officer and Deputy Director.

The Office's role is to ensure that all contracts are renewed, amended as needed, and replacement solicitations are issues incorporating all the requirements of the operations in a timely manner. The Office of Contract Management has instituted a set of strategies and protocols that are the building blocks of a departmentwide contract management structure. The structure recognizes that everyone has a role to play in managing DGS contracts and ensuring that activities of DGS' contractors comply with the goods and services that the contract specifies. These strategies include the following:

- **The Office of Contract Management holds monthly meetings with division staff to review the contracts under management.** The meetings have a standard agenda and attendance includes all staff who share responsibility for parts of the contracting process.
- **The Office of Contract Management sees the contract administrators in DGS' divisions as the first line of defense in ensuring vendor performance.** At the monthly division meetings, staff in the Office of Contract Management reinforce messages about the importance of transparency, communication and taking action to address issues. OCM explains that an avenue exists to address every type of issue. They stress the importance of taking prompt action to address and resolve an issue and they reinforce the importance of communicating issues upward.
- **The Office of Contract Management actively seeks approval from the Contract Review Committee to streamline contracts where applicable by seeking approvals for sole source**

contracts, contract amendments and emergency procurements. The OCM Manager attends every CRC meeting that DGS is involved in.

There are one contract administrator and multiple technical points of contact in each DGS operational division who are supported by the staff in the Contract Administration Unit.

3. DGS' Contract Monitoring Practices and Standards

The OCM Manager states that DGS deploys a two-part approach to promote good contract governance practices, which leads to improved contract compliance. The first part emphasizes the contract drafting, solicitation, and award phases of the contracting process. The upfront investment of these resources yields dividends because they minimize the risks of compliance even becoming an issue. The second part addresses the noncompliance and enforcement issues that arise despite the investment of upfront resources.

DGS' Upfront Investments in Preventing Noncompliance Issues. DGS' upfront investments to improve its contract management operations include revisions to its sourcing methods for some of its major service needs, the development of new department protocols for change orders and emergency procurements and other operational changes.

A Switch to Non-Competitive Fleet Management Service Contracts. Within the Fleet maintenance universe, several manufacturers are awarding service contracts to single dealers in each state. Such relationships require the Division of Fleet Management to utilize only the designated dealer to ensure that service is performed by certified mechanics and the repairs are warranted by the manufacturer.

DGS transitioned from competitive to sole source contracts to keep pace with changing industry practices. DGS worked with the Contract Review Committee to standardize the terms and conditions of these sole source contracts ensuring that the County receives the same or better contract terms than surrounding jurisdictions within the State of Maryland.

Developing Solicitations for Facility Management Contracts as IFBs instead of RFPs. The OCM Manager explained that DGS followed a multi-step process to convert its contracts from RFPs to IFB. RFP solicitations require a greater investment of staff resources while providing for evaluation of factors other than price. IFB's on the other hand are based on price and a responsibility and ability check. First, DGS conducted research to determine whether suppliers had the knowledge and capacity to meet its service needs via IFB issuances rather than RFP's. Next, it leveraged the expertise of DGS technical staff to develop a more comprehensive set of requirements. These requirements were subsequently incorporated into the IFB contract. DGS technical staff also participated in site visits to examine a vendor's facilities, equipment and supply inventory. DGS incorporated information from these site visits in its determination of a vendor's capacity to meet its service delivery needs.

Benefits of centralization of Contract Office. The OCM Manager has established a departmental protocol that requires all amendments and change orders on the contracts to be routed through the contract office. This process improves quality control and ensures the timely execution of the contract action. In

addition, the Department of General Services has stopped issuance of unilateral construction field orders/change orders and now request approval from the Contract Review Committee. This improves transparency and accountability for all construction related projects. The protocol for emergency procurements has also been streamlined to improve transparency and accountability. Procurement processes for requesting an emergency via the Department Director and addressing the requirement with supporting detail is emphasized through all Divisions within the Department.

Operational Changes. According to the OCM Manager, there are also operational changes that have minimized contract compliance issues. These include:

- DGS' transition to scheduled, preventative maintenance that allows DGS to establish more robust working relationships with vendors. It also eliminates noncompliance issues that arose when clients experienced delayed contractor responses in an emergency. Thus, this approach makes customer complaints less likely. The contracts also include language that requires the person who approves the invoice to receive vendor reports about the inspection results.
- The creation of an electronic master asset file of the facilities for each contract that improves oversight and allows for a well-managed amendment process to add/delete facilities within the contract.

Post Award Strategies to Manage Vendor Performance and Detect Noncompliance. The OCM Manager states that even with the upfront investments DGS has made, vendor performance issues still arise during the life of a contract. Typically, issues are due to a vendor's misunderstanding about DGS' service needs,²² a breakdown in a vendor's performance or issues with a vendor's finances.

The OCM Manager states that DGS relies on a mix of formal and informal practices to monitor vendor performance. For example, some contracts may require frequent inspections, specify the triggers and procedures for unacceptable or incomplete work (including timing of remediation and follow up inspections), and inclusion of liquated damage clauses. DGS also maintains hotlines for tenants in County owned facilities to report complaints about building custodial services.

Contract Compliance Issues and Terminations. OLO reviewed contract terminations from FY16 to FY18 and found that DGS terminated nine contracts during that time, six by mutual consent and three for default.

	FY16	FY17	FY18
Terminated by Mutual Consent	4	0	2
Terminated for Default	0	3	0

²² When issues arise due to a lack of clarity about the service expectations, DGS' contract monitors work with vendors to clarify the service terms specified in the contract.

4. Department of Health and Human Services (DHHS)

The Department of Health and Human Services protects the community's health, protects the health and safety of at-risk children and vulnerable adults and addresses basic human needs including food, shelter and clothing. DHHS has several service areas: Aging and Disability Services; Behavioral Health and Crisis Services; Children, Youth and Family Services; Public Health Services and Special Needs Housing. DHHS has a FY20 Operating Budget of \$323.6M and employs a staff of 1,750. It offers 120 unique programs that serve over 100,000 people annually.

A. DHHS' Portfolio of Active Contracts

DHHS manages a portfolio of over 700 contracts with over 200 different organizations, not including the contracts that DHHS manages as a result of the Council grant program. In FY19, DHHS encumbered \$95.2M to fund these contracts. Of this total, \$48.7M was for contracts based on RFPs and \$27.1M was for noncompetitive contracts. Another \$41.1M was for non-competitive contracts based on the Council's budget resolution. The following table provides details of DHHS' active contract portfolio.

DHHS' Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Method

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	28	\$434,936	\$200,533	\$258,403
Invitation for Bid Contracts	13	\$581,179	\$649,617	\$646,733
Request for Proposal Contracts	122	\$43,348,399	\$39,178,377	\$48,650,185
Bridge Contracts	13	\$868,805	\$969,128	\$882,465
Non-Competitive Contracts	321	\$23,205,484	\$23,869,523	\$27,119,294
Open Solicitation Contracts	201	\$8,767,659	\$10,662,335	\$9,472,933
Public Entity Contracts	37	\$1,783,326	\$3,610,741	\$8,178,549
SUB-TOTAL	735	\$79.0	\$79.1	\$95.2M
Non-Competitive Council Resolution Contracts	296	\$36,630,838	\$12,917,611	\$41,091,829
GRAND TOTAL	1,031	\$115,620,626	\$92,057,865	\$136,300,391

Source: OLO and Office of Procurement, December 2019.

The next table shows DHHS' contracts arrayed into four broad groups by sourcing method, contract award value and competitiveness. The distribution by number of contracts shows that those contracts in Tier III, i.e., bridge, public entity and non-competitive contracts, account for 65% of all active contract awards. The distribution by contract value based on FY19 encumbrances shows that Tier III contracts account for 57% of contract value followed by competitive contracts in Tier II, which account for 36%.

Active DHHS Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			%	% Distribution Encumbered Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	28	\$434,936	\$200,533	\$258,403	3%	0%	0%	0%
Tier II – Sealed Bids over \$100K	135	\$43,929,578	\$39,827,994	\$49,296,918	13%	38%	43%	36%
Open Solicitations	201	\$8,767,659	\$10,662,335	\$9,472,933	19%	8%	12%	7%
Tier III – Bridge, Public Entity, Non-Competitive, with No Cost Thresholds	671	\$62,488,453	\$41,367,003	\$77,272,137	65%	54%	45%	57%
TOTALS	1,035	\$115,620,626	\$11,213,493	\$136,300,391	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. DHHS' Contract Management Structure

DHHS' frontline contract management responsibilities are carried out by Program Staff in DHHS Service Areas with critical support from DHHS' Contract Management Team (CMT). Oversight and supervisory responsibilities for DHHS contracts is shared between DHHS' Chief Operating Officer and DHHS' Service Area Chiefs who manage Program Staff who serve as contract monitors.

- Ten staff on the Contract Management Team (CMT) work with staff in the Office of Procurement and staff in DHHS' Service Areas to ensure compliance with the Procurement system rules.
- A complement of 137 Program Staff are responsible for ensuring implementation of the contract terms and conditions. This includes monitoring vendor performance and taking action to resolve any issues. Some Program Staff serve as dedicated Contract Monitors, while for others, contract monitoring duties are only one part of a broader set of program responsibilities.

Other teams with contract management roles and responsibilities in DHHS include the Compliance Team, the Fiscal Team, the Budget Team and the Administrative Service Coordinators (ASCs) in each Service Area. See table in Section C below for more details about the roles of these teams in contract monitoring.

C. DHHS' Contract Monitoring Practices and Standards

Contract monitoring in DHHS is designed to operate as a continuous system of oversight and support to the vendor. It allows DHHS staff to determine that DHHS' contractors are rendering services at an acceptable level and complying with the agreed scope of services.

DHHS has had mandatory Program Monitoring Guidelines in place for over 15 years.²³ Currently, these guidelines are part of DHHS' Handbook for Monitors ("the Handbook"). The Handbook explains the importance of contract monitoring, how contract monitoring duties vary over the life of a contract and how to understand budgets and provides key details about DHHS' contract monitoring standards. According to the Handbook, the objectives of contract monitoring in DHHS are to ensure that:

- Contracts completely and accurately reflect the Department's desired services, service levels, deliverables, and outcomes;
- Contractors provide all the services contained in the Scope of Services;
- High quality services are delivered to County clients;
- All applicable laws and regulations are followed, including federal or state regulations that are applied as part of grant funding; and
- DHHS performance goals are attained.

DHHS' Chief Operating Officer states that DHHS views compliance as a multi-layered process. Senior management recognize that vendors will have performance issues and DHHS expects contract monitors to be aware of these issues.

1. Overview of Contract Monitoring Roles and Responsibilities

The Handbook assigns oversight and approval functions for the contracting process to the Chief Operating Officer and Service Area chiefs and assigns contract monitors and the CMT primary responsibility for contract monitoring. The next table details the contract monitoring roles and responsibilities in DHHS.

²³ In 2003, DHHS' Contract Management Team hired consultant Walter Wolfe, a former DHHS employee, to evaluate DHHS' contract monitoring function. In conjunction with the CMT, Wolfe established the DHHS Program Monitoring Guidelines, which currently serve as DHHS' contract monitoring standards. In 2004, DHHS amended the guidelines to add guidelines for Contractor Corrective Actions. In 2008, DHHS updated the guidelines to include expanded roles for the Chief Operating Officer, the Chief of Financial Operations and the Service Chiefs.

DHHS Contract Monitoring Roles and Responsibilities

Role	Duties Include
Chief Operating Officer	<ul style="list-style-type: none"> • Oversight of the Fiscal, Contract Management and Compliance Teams and delegated responsibility for Director's responsibilities. • Approves vast majority of procurement actions forwarded from CMT. • Assigns Community Grants to Service Areas.
Contract Monitors (Program Area Staff)	<ul style="list-style-type: none"> • Serves as liaison between the County and contractor. • Conducts site visits and submits at least one Monitoring Review Form/Report per contract to CMT annually. • Addresses unacceptable contractor performance by following steps described in the Contractor Corrective Action: A Guideline. • If needed, works with CMT and Compliance to institute formal corrective actions for any material deficient performance issue with contractors. • Receives and reviews contractor reports, invoices and backup documentation. • Signs and submits an invoice review certification form to initiate the invoice payment process.²⁴ • Monitors and tracks contract expenditures and notifies contractor at risk of overspending. • Maintains backup documentation associated with and supporting contract payments and contractually required reports that can be made available to auditors and internal stakeholders. • Drafts scopes of service, reporting requirements, performance measures, payment schedules, etc. for new contracts and amendments and similar parts of initial drafts of solicitations.
Contract Management Team (CMT)	<ul style="list-style-type: none"> • Collaborates with Service Areas and Contract Monitors on contract issues and processes solicitations or contract actions. • Provides DHHS specific training to supplement trainings offered by the Office of Procurement. • Works with Contract Monitor to furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement and to the County Attorney, as appropriate. • Maintains an Official Contract Monitor Contract File with purchase orders, contracts, amendments, invoices, correspondence, monitoring notes and other pertinent documents. • Meets periodically with Service Area's Contract Monitors to identify any contract issues. • Ensures language in draft solicitations is clear and responsive to DHHS policies and procedures.

Source: DHHS Handbook for Monitors, 2015

²⁴In MCIA 11-2, the Internal Auditor explained that "the invoice review certification form is used for documenting that the Monitor is certifying with his/her signature that the work has been performed at the level expected, the vendor is in compliance with all reporting and service requirements, the vendor is in compliance with all reporting and service requirements stated in the contract, the invoice is correct and is in line with the budget, if applicable, and that the invoice should be paid." DHHS instituted the form in FY2010 as part of a broader effort to improve its approach to invoice documentation and review. In MCIA 11-2, the Internal Auditor wrote that "the form contributed to enhanced accountability related to contract monitoring because the Monitors became even more explicitly responsible for the oversight of contract expenditures." P. 15

DHHS Contract Monitoring Roles and Responsibilities (Continued)

Role	Duties Include
Compliance Team	<ul style="list-style-type: none"> • Works and collaborates with Contract Monitors, CMT and contractors on contract budgets and budget modification, price cost analysis and corrective action plans. • Consults with contract monitors in their review of invoices, contract budgets and contract performance. • Performs in-depth contract reviews for compliance to the terms and conditions of the contract as part of Compliance Team's annual work plan. • Prepares monthly matrix for vendors with five or more cost reimbursement contracts and notifies contractors of selected contracts.
Fiscal Team	<ul style="list-style-type: none"> • Reviews contract invoices for adequate documentation of the accounting codes, supervisory approval, contract number and purchase order number. • Maintains invoice and payment files.
Administrative Service Coordinator (ASC)	<ul style="list-style-type: none"> • Provides oversight to all contractual processes in assigned Service Area. • Liaison between the Service Area and CMT. • Ensures collaboration with other services areas, as needed.

Source: DHHS Handbook for Monitors, 2015

Contract Management Team. The CMT works with administrative service coordinators, contract monitors, and service area chiefs to ensure each contract is appropriately monitored. The CMT serves as the custodian of the contract monitoring reports submitted by the Service Area contract monitors. DHHS policy requires submission of a minimum of one Monitoring Review Form/Report per fiscal year, per contract or as needed to address unacceptable contractor performance. A contract monitoring report is part of the required documentation for the renewal of each contract. Contract monitoring files are filed separately from the official CMT contract files.

Contract monitors are required to submit contract monitoring plans to the CMT. A CMT case manager reviews plans for formality. If an issue arises with contract monitoring, the program area contract monitor then will notify the CMT if necessary.

The CMT has one position dedicated to contract monitoring and is in the process of developing the position's roles and responsibilities. Currently, the position's primary responsibilities include:

- Coordinating and reviewing contract monitoring tasks of program area staff, including maintaining a department wide database that tracks when the last site visit was conducted for a particular contract;
- Reviewing contract monitor plans for compliance with a contract's scope of services; and,
- Managing the LSBRP Program for DHHS.

2. Tools for Contract Monitoring

The Handbook states that most contract monitoring takes place during the performance and payment stage of the contract process. DHHS expects that contract monitors will use numerous methods to monitor a contractor's performance, including site visits, reading and evaluating program reports and other contract specified reporting mechanisms.

Site Visits. Site visits are a key monitoring tool for DHHS contract monitors. Ideally, the Handbook suggests that DHHS staff visit contractors quarterly; however, the Handbook acknowledges contract monitors may need to set priorities for contractor site visits due to budget reductions or other types of resource constraints. The Handbook suggests contract monitors use the criteria below to determine the frequency of their site visits.

DHHS Contract Monitoring Roles and Responsibilities

Priority Level	Criteria	Suggested Frequency
High	<ul style="list-style-type: none"> • Delivery of medical or mental health services • Services provided to high risk clients, i.e., substance abusers, inmates, etc. • Services provided to at-risk or vulnerable clients, i.e., children, frail elderly, battered women, people with severe disabilities, etc. • Past contractor performance problems • Fixed cost contracts 	Four times a year
Medium	<ul style="list-style-type: none"> • Higher level of contract funding, i.e., a contract above \$200,000 • Complex scope of services • High profile service and/or service with high level of community interest or visibility 	Twice a year
Low	<ul style="list-style-type: none"> • Other contracts, as considered appropriate by the Monitor 	Once a year

Source: DHHS Handbook for Monitors, 2015.

The Handbook recommends arranging a site visit shortly after a new contract is executed to introduce the contract monitor and discuss DHHS' service expectations. It also suggests that Contract Monitors be familiar with the contract's scope of services and the contractor's expenditures as well as any recent contractor reports and any outstanding compliance issues. It advises Monitors to consider the strength of a contractor's administrative and financial management capacity and to give adequate notice of the visit. The Handbook identifies numerous review areas for contract monitors to check out and address in the Monitoring Report.

The Monitoring Review Form/Report. According to the Handbook, contract monitors should submit Contract Monitoring Plans to the CMT for all new contracts within 60 days of contract execution. For

contract monitoring, DHHS uses two basic types of monitoring plans and one financial monitoring form – the *Program Monitoring Review Form*, the *Program Monitoring Review Short Form: for Delivery Order/Task Orders and Open Solicitations*, and the *Contractor Financial Management Monitoring Form* – described below. Both CMT staff and program area staff report that contract monitors do not submit monitoring plans within the recommended timeframe. Copies of the monitoring forms are available in Appendix G.

These forms allow contract monitors to rank how well vendors provide each item in a contract’s scope of service. Vendors can be in:

- **Full compliance** – contractor is in full compliance with contract item under review;
- **Partial compliance** – contractor needs to improve on the item under review; or
- **Non-compliance** – contractor is significantly out of compliance and needs to submit a corrective action plan on item under review.

Program Monitoring Review Form. The five-page *Program Monitoring Review Form* allows contract monitors to record findings from monitoring activities, primarily from site visits. The form allows contract monitors to record information outlined below:

- | | |
|---|---------------------------------|
| • Adherence to applicable federal and state laws; | • Customer privacy; |
| • Administrative management effectiveness; | • Customer satisfaction; |
| • Applicable DHHS performance measures; | • Facilities; |
| • Client demographics and tracking; | • Financial management; |
| • Client files management; | • Fiscal files; |
| • Contractor operating procedures; | • Meeting enrollment goals; and |
| • Contractor service delivery and client groups served; | • Meeting program goals. |
| • Contractor staffing; | |

Program Monitoring Review Short Form: For Delivery Order/Task Orders and Open Solicitations. The two-page *Program Monitoring Review Short Form* is designed for less complex oversight than the five-page form. Contract monitors can review whether goods or services meet contractual specifications, whether the contract should be renewed and can include an explanation if the goods or services were not delivered according to the scope of services.

Contractor Financial Management Monitoring Form. Contract monitors use the *Contractor Financial Management Monitoring Form* to perform a more detailed examination of a vendor’s financial management system. The form helps contract monitors perform a more thorough assessment of a vendor’s financial integrity than the financial-related questions in the *Program Monitoring Review Form*. For most contracts, the vendor must submit to the contract monitor a monthly report with a monthly invoice that reflects the services provided.

3. Contract Monitoring in Practice

DHHS states that typically there is a two-step pathway to achieving contractor compliance if an issue arises. The first step is for the contract monitor to initiate a conversation, so the contractor understands the problem. Depending on the issue, the contract monitor can provide technical assistance; however, the monitor will be mindful of maintaining arm's length support. In the course of resolving an issue, monitors are able to check in with the Compliance Team for advice and support.

DHHS staff brought up two issues concerning the contract monitoring of DHHS contracts:

- Expectations for programs and contracts are not static and performance-based contracts within health and human services can be difficult to have performance assessed;
- There are management capacity issues as evidenced by the fact that CMT is often chasing behind its internal benchmarks. Staff report there is a need for more management capacity to devote resources to aligning the performance measures in DHHS contracts with DHHS' department and program performance measures.

Contract Compliance Issues and Terminations. Contract monitors are responsible for determining the nature and severity of poor performance under a contract and providing contractors with written notice of problems and recommendations and timelines for corrective action. The contractor is required to respond in writing with a corrective action plan, which the contract monitor reviews and uses to monitor corrective action. Contract monitors may use unscheduled site visits for poorly performing contractors who do not respond to corrective action requests.

According to DHHS staff, the types of contract issues that arise most often are due to disconnects that occur between a contract's scope of services and a vendor's budget. For example, DHHS currently manages more cost reimbursement contracts with federal and state dollars than it did previously.²⁵ DHHS uses standard budget template forms but some vendors struggle with putting together a budget that makes sense and relates clearly to the scope of services. DHHS meets with vendors to review budgets and point out potential problems, such as indirect costs or fringe rates that need to be right-sized. At the same time, DHHS must maintain an arm's length separation.

Between FY16 and FY18, DHHS terminated 21 contracts by mutual termination and zero by default. The reasons for these terminations vary and include: the vendor retiring or no longer providing the services

²⁵ As explained in the Handbook, a cost reimbursement contract is one of three County contract types that determines how a contractor is paid. The contract usually includes maximum compensation language that prohibits payments above a dollar amount listed in the contract. The structure of the contract ensures minimal cost risk to the County because all payments depend on the contractor providing documentation to show that they incurred the cost. DHHS uses cost reimbursement contracts for programs where services change throughout the year. In these cases, i.e., when the number and type of required services are highly variable, the contract only provides a payment for the contractor's actual program costs and these costs must be based on a budget. DHHS provides a budget template form that a contractor must submit to the Contract Monitor for review and approval.

requested, vendor returned to or was hired by the County, new contract was executed with vendor for same services. There were also several contracts that were terminated due to performance issues.

Contract Terminations, Department of Health and Human Services FY16-FY18

	FY16	FY17	FY18
Terminated by Mutual Consent	9	6	6
Terminated for Default	0	0	0

5. Department of Housing and Community Affairs (DHCA)

DHCA has a FY20 Operating Budget of \$58.8M and employs a staff of 100.7 FTEs. DHCA's programs include community development projects and code enforcement to address the physical decline of residential and commercial uses as well as housing loans and grants to address problems of housing affordability.

A. DHCA's Portfolio of Active Contracts

DHCA manages a portfolio of 113 active contracts with 66 organizations. DHCA contracts out for many types of services, such as the design and construction of streetscape improvements, residential landscaping and solid waste removal services, providing homebuyer education classes and vocational training. Many DHCA's contracts are results of federal and state grant awards.

The next table shows DHCA encumbered \$4.7M in FY19 for its active contracts which included funding for \$2.8M for 41 Council Grants, \$553K for 10 RFP contracts and \$522K for seven public entity contracts.²⁶

DHCA's Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Group

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	2	\$25,000		
Invitation for Bid Contracts	8	\$894,539	\$158,042	\$150,000
Request for Proposal Contracts	10	\$113,339	\$2,937,734	\$553,055
Competitive General Grants ²⁷	35	\$624,948	\$530,939	\$347,009
Non-Competitive Contracts	10	\$838,170	\$573,000	\$282,937
Public Entity Contracts	7	\$322,285	\$263,000	\$522,350
SUB TOTAL	72	\$2,818,281	\$4,462,715	\$1,855,351
Non-Competitive Council Resolution Contracts	41	\$1,450,949	\$2,232,348	\$2,821,976
GRAND TOTAL	113	\$4,269,230	\$6,695,063	\$4,677,327

Source: OLO and Office of Procurement, December 2019.

The next table shows DHCA's contracts arrayed into four broad groups by sourcing method, contract value and competitiveness. The distribution by number of contracts shows contracts that are non-

²⁶ This data does not include encumbrances for DHCA's contracts

²⁷ Competitive General Grants includes contracts that DHCA enters as a result of its administration of the federal Community Development Block Grant (CDBG) program. The awardees are selected through a competitive process that relies on a panel of community members that is convened annually and complies with federal rules.

competitively bid or with public entities account for 51% of DHCA's active contracts. Competitive general grant contracts are 31% of the portfolio and those that are competitively bid, or Tier II contracts, are 16% of the portfolio. By contract value, the data show that noncompetitive contracts, or those in Tier III, account for 78% of FY19 encumbrances compared to competitive contracts (Tier II) which account for 15%. FY19 encumbrances for competitive general grants account for the remaining 7%.

Active DHCA Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			%	% Distribution Encumbered Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	2	\$25,000	0	0	2%	1%	0%	0%
Tier II – Sealed Bids over \$100K	18	\$1,007,878	\$3,095,776	\$703,055	16%	24%	46%	15%
Competitive General Grants	35	\$624,948	\$530,939	\$347,009	31%	15%	8%	7%
Tier III – Non-Competitive and Public Entity Contracts with No Cost Thresholds	58	\$2,611,404	\$3,068,348	\$3,627,263	51%	61%	46%	78%
TOTALS	113	\$4,269,230	\$6,695,063	\$4,677,327	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. DHCA's Contract Management Structure

DHCA aligns its contract management responsibilities with how contracts contribute to programs in each division. Specifically:

- **Finance Division**, two Senior Planning Specialists in the Grants Administration Section oversee DHCA contracts that are funded with Federal and County grant dollars. This represents the bulk of DHCA's contracts.
- **Community Development Division**, one Senior Planning Specialist in the Neighborhood Revitalization Section oversees contracts for neighborhood assistance projects; and the Manager of the Code Enforcement Section oversees contracts that provide services for boarding up, landscaping and property maintenance.
- **Asset Management Group in Administration and Finance Division** administers contracts that support delivery of housing developments and the management of the County's housing loan portfolio that is funded with Housing Initiative Fund dollars.

DHCA's Decentralized Contract Management Structure

Role	Duties Include
DHCA Director	<ul style="list-style-type: none"> • Oversight of DHCA's fiscal, contract management and compliance responsibilities.
DHCA Division Chiefs	<ul style="list-style-type: none"> • Approve vast majority of procurement actions forwarded from Program Staff. • Rarely, on as needed basis, work with Program Staff to furnish timely written notice of contractor performance failures to Director, Procurement and County Attorney.
Program Staff (in DHCA Divisions)	<ul style="list-style-type: none"> • Serve as liaison between the County and the grantee or contractor. • Monitor and track grantee scope of services and deliverables and receive and review reports, invoices and backup documentation. • Monitor contract expenditures and notify contractors at risk of overspending. • Sign and submit invoices with supporting documentation to initiate payment process. • Address unacceptable contractor performance and, if needed, work with the DHCA Procurement Unit and the Offices of Procurement and the County Attorney and other parties as needed to institute formal corrective actions for any material deficient performance issue with contractors. • Draft scopes of service, reporting requirements, performance measures, payment schedules, etc. for new contracts and amendments and initial drafts of solicitations. • Maintain Official Contract Files with purchase orders, contracts, amendments, invoices, correspondence, monitoring notes and other pertinent documents. • Contract monitors conduct annual field visits to grantee organizations.
Administrative Staff in DHCA's Divisions	<ul style="list-style-type: none"> • Work with Division Chiefs and staff on processing of invoices and contract actions. • As needed, work with Contract Monitors to ensure language in draft solicitations and language in contracts is clear and responsive to DHCA's policies and procedures.

Source: OLO and DHCA.

C. DHCA's Contract Monitoring Practices and Standards

DHCA states that its contracts are closely aligned and integrated with its program and service delivery responsibilities. As a result, responsibilities for monitoring contracts are embedded into DHCA's organizational structure and DHCA staff generally work closely with vendors to deliver services. This means it is rare that DHCA has instances of noncompliant vendors that require DHCA to initiate steps to escalate an issue of nonperformance. In response to past audit suggestions, DHCA management ensures that staff that routinely deal with contracts complete the training offered by the Office of Procurement.

Contract Monitoring in DHCA's Grants Administration Section in the Finance Division. The County's Federal Grants are administered by a community board that DHCA convenes every fall. The board is responsible for interviewing applicants and making final decisions about the organizations that receive grants. The expectation is that DHCA as grant administrator will create an administrative structure that ensures that grantees are conducting their activities in a manner that complies with federal HUD guidelines.

DHCA states it has instituted monitoring practices that ensure that DHCA is highly accountable for the performance of the grantees. Multiple provisions that are part of the administrative structure for federal contracts also establish an effective monitoring structure. For example:

- As part of the application process, a potential grantee must provide documentation to show that it is in good standing with the State Department of Assessment and Taxation (SDAT);
- The scopes of services for the grants must specify deliverables;
- Grantees must submit periodic invoices on a monthly or quarterly basis; and
- Grantees must submit quarterly performance reports, which DHCA reviews to verify that they are on track to meet their deliverable targets.

DHCA states that roughly 10% to 20% of grantees require technical assistance to ensure that they are complying with HUD requirements, including income eligibility requirements that apply to service recipients.²⁸ DHCA also notes that they see a fairly high variety in grant recipients. This is due to HUD eligibility guidelines which limit issuing a grant to the same organization for the same set of activities to a three-year period.

Methods for Detecting Potential Compliance Issues. DHCA states that the methods it uses to identify potential issues vary based on the type of contract. For example,

- Architectural and Engineering Construction Contracts: Staff inspectors are in the field to monitor the progress of the work.
- Service Contracts (e.g., federal program grants or neighborhood assistance grants): Staff review vendor invoices and check the contract files to look for documentation of the services delivered. An example would include reviewing the attendance sheets for an event or activity.
- Advocacy or Education Services: DHCA conducts drop in visits on a regular basis to ensure that the information that vendors are providing is accurate.

Contract Compliance Issues and Terminations. DHCA did not terminate any contracts in the years that OLO reviewed, FY16 through FY18. However, more recently, DHCA had compliance issues with a vendor that was providing landscaping and solid waste removal services for an abandoned property as part of its Clean and Lien program. The contract scope of work specifies that:

- Required solid waste removal services may include removal of appliances, furniture, construction materials, branches and tree parts in addition to general trash;
- The Contractor must coordinate with County personnel if they wish to dispose of waste at the County Transfer Station; and
- Landscaping services must include grass cycling.

²⁸ For example, one contract states “The Contractor must verify and document that a minimum of 70% of all clients assisted with CDBG funds are income eligible ... Adequate ...documentation consists of copies of federal tax returns or documentation of receipt of other government income-determined benefits (Housing Choice Voucher or other rental assistance, SSI, SSDI, FARMS, TANF, Medical Assistance, etc.) ... The contract must also electronically submit Benefit Data Reports to DHCA on a quarterly basis.”, as regulations requires the contractor to electronically submit accurate and timely Benefit data Reports.” See Contract No. 1064771, p. 4.

The contract also required the Contractor to provide an inventory of equipment available to perform the work and required that the Contractor have the equipment and manpower to perform the tasks within 10 calendar months of being assigned.

DHCA stated that it was aware from the outset that the vendor faced challenges in meeting the contract deliverables. When DHCA began receiving complaints from local residents, documented nonperformance issues and made the vendor aware of the issues. DHCA attempted to work with the vendor to address the backlog of assignments; however, the vendor determined it was unable to complete the work. DHCA worked with Procurement staff to have the vendor removed for cause, to terminate the contract and to issue an emergency procurement to have the work completed.

6. Montgomery County Police Department (MCPD)

The Montgomery County Police Department (MCPD) has a FY20 Operating Budget of \$295.3M and a workforce of 1,972 FTEs. MCPD has five major programs: Patrol Services, Management Services, Field Services, Investigative Services and the Office of the Chief.

A. MCPD's Portfolio of Active Contracts

MCPD manages a portfolio of 118 contracts with a variety of types of contracts. According to the MCPD staff, MCPD is a heavy user of goods, with technology being a heavy driver of MCPD's buying patterns. The table below shows MCPD encumbered \$19.5M in FY19, including \$8.75M for 13 Request for Proposal (RFP) contracts, \$3.8M for 23 Bridge contracts and \$3.2M for 10 Invitation for Bid (IFB) contracts.

MCPD's Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Group

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	19	\$100,080	\$119,080	\$234,847
Invitation for Bid Contracts	10	\$3,795,832	\$3,391,847	\$3,201,164
Request for Proposal Contracts	13	\$9,768,515	\$530,990	\$8,750,192
Open Solicitation Contracts	5	\$50,500	\$110,896	\$138,300
Bridge Contracts	23	\$2,508,492	\$2,696,355	\$3,849,514
Joint/Cooperative	4	\$146,559	\$308,374	\$1,263,403
Non-Competitive Contracts	40	\$978,951	\$1,181,560	\$1,844,705
Public Entity Contracts	1	\$125,000	\$125,000	\$125,000
SUB TOTAL	115	\$17,473,929	\$8,464,102	\$19,407,125
Non-Competitive Council Resolution Contracts	3	\$79,450	\$85,450	\$96,950
GRAND TOTAL	118	\$17,553,379	\$8,549,552	\$19,504,075

Source: OLO and Office of Procurement, December 2019.

The next table shows MCPD's contracts arrayed in three broad groups to highlight patterns by sourcing method, contract award value and competition. The distribution of contracts by number of awards shows contracts in Tier II, i.e. those based on competitive solicitations with a threshold of \$100,000 or more, and in Tier III, contracts sourced through open solicitations, bridge arrangements or noncompetitively with no cost thresholds, account for about 85% of the portfolio. By value, the FY19 encumbrances show the contracts in Tiers II and III accounted for 99% of the value of the portfolio. The 23 contracts in Tier II that were competitively bid accounted for 61% of FY19 encumbrances while the 76 contracts in Tier III accounted for 38% of FY19 encumbrances.

Active MCPD Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			% Contracts	% Distribution Enc. Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	19	\$100,080	\$119,080	\$234,847	16%	1%	1%	1%
Tier II – Sealed Bids over \$100K	23	\$13,564,347	\$3,922,837	\$11,951,356	19%	77%	46%	61%
Tier III – No Cost Thresholds	76	\$3,888,952	\$4,507,635	\$ 7,317,872	64%	22%	53%	38%
TOTALS	118	\$17,553,379	\$8,549,552	\$19,504,075	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. MCPD Contract Management Structure

The Chief of Police has the ultimate responsibility for the overall management, direction, planning and coordination of all MCPD programs and operations, including its procurement functions. MCPD centralizes the organization of administration, management support services and technical support in its Management Services Bureau which has nine divisions. Responsibility for the procurement function is assigned to one of these divisions, the Management and Budget Division.

Responsibilities for MCPD's procurement system are divided among staff in each of MCPD's bureaus and staff in the Management and Budget Division of the Management Services Bureau. Specifically:

- **Division Chief and program managers in MCPD's Bureaus** are responsible for: specifying the goods and services they need, accepting delivery of goods and services and ensuring their acceptability, monitoring contracts, receiving, reviewing and approving vendor invoices and any supporting documentation and forwarding invoices to the Finance Section for payment.
- The **Procurement Unit in MCPD's Management and Budget Division of the Management Services Bureau** has four full-time positions dedicated to MCPD's procurement functions. The staff provide in-house procurement expertise, advice and assistance to other MCPD Bureaus. This assistance includes providing guidance and support in the solicitation phase to help Bureau staff with sourcing methods and defining contract specifications and scopes of services as well as aiding Bureau staff who serve as contract administrators after a contract is executed.

Administrative staff in MCPD's Bureaus are responsible for the receipt, review and approval of goods and services and for approving and submitting invoices to the Finance Unit in the Management and Budget Division.

The next table summarizes the responsibilities of the various entities in MCPD's procurement process.

MCPD's Contract Management Structure

Role	Duties Include
Chief of Police	<ul style="list-style-type: none"> Responsible for the overall management, direction, planning and coordination of MCPD programs and operations, including its procurement functions.
Management and Budget Division – Procurement Unit	<ul style="list-style-type: none"> Serves as source of in-house procurement expertise and advises and assists with acquisition of all MCPD goods and services. Advises Bureau Division staff on how to work with various MCFRS vendors to address service needs. Serves as MCPD's liaison to the Offices of Procurement and the County Attorney throughout the life of a contract. Enters and approves payments and purchase orders forwarded from MCFRS Divisions. Coordinates and oversees MCFRS' purchasing card accounts. Working on development of an asset database.
Division Chiefs, Program Staff and Administrative staff in MCPD Bureaus	<ul style="list-style-type: none"> Serve as liaison between the County and contractor. Meet contractors on-site to verify and sign off on work specifications and quality. Receive, review and approve vendor invoices, reports and backup documentation. Monitor and track contract expenditures and notify contractor at risk of overspending. Forward approved vendor invoices to Procurement Section for payment. Responsible for initiating action to address unacceptable contractor performance. If needed, work with the MCPD Procurement staff and staff in the Offices of Procurement and the County Attorney and other parties to institute formal corrective actions for any material deficient performance issue with contractors. Draft scopes of service, reporting requirements, performance measures, payment schedules, etc. for new contracts, amendments and initial drafts of solicitations. Responsible for maintaining Official Contract Files with purchase orders, contracts, amendments, invoices, correspondence, monitoring notes and other pertinent documents.

Source: OLO and MCPD.

C. MCPD's Contract Monitoring Practices and Standards

The monitoring of contracts for MCPD is completed by both contract monitors and contract administrators. MCPD staff report that most MCPD contracts have contract monitors and/or contract administrators. Typically, contract monitors are uniform staff while contract administrators are civilian staff. Procurement Unit staff state they manage 50 high priority solicitations on an ongoing basis.

According to staff, both monitors and administrators are well intentioned, but challenges emerge when monitoring contracts for two reasons. First, contract administration responsibilities frequently have to compete with other job duties, which often have a higher priority. Second, in contrast to DHHS where program managers tend to stay with the program, there is much more movement among the ranks at

MCPD. The ongoing rotation of MCPD uniform staff into and out of bureau programs makes it difficult to establish a dedicated procurement workforce across the department that has the stability necessary to maintain the continuity of MCPD's business operations.

An MCPD report outlines a comprehensive set of procurement directives that MCPD has instituted, including the development of an in-house SharePoint system that incorporated a set of checks and balances into the design of the workflow for vendor invoices and payments. The system has a set of function codes that summarize MCPD's procurement directives and it effectively creates an embedded departmentwide three-way match process. MCPD has also established a procedure that requires every purchase of \$25K or more to have two approvals, including one by an Assistant Chief. Staff believe that with these procedures in place, MCPD has created an effective set of controls for its invoice processing and payment system.

MCPD staff state that contract monitors typically work informally with vendors to address contract issues, but the Procurement Unit will comply with Procurement policies when the need arises to issue pre-cure letters or notices of terminations. Examples of compliance challenges with MCPD contracts include: a contractor responsible for supplying uniforms who had difficulties keeping up with the demand volume or issues with other contracts that arose due to the trade-off of using a more affordable overseas supplier but then having to deal with delays due to issues that arise as a result of an overseas supply chain. To address these challenges, the Procurement Unit proactively works with key staff to anticipate where shortages might occur and buy in advance. When a contract administrator needs to pursue a formal course of action to resolve a contract compliance issue, they will coordinate their efforts with the MCPD Procurement Unit.

The Procurement Unit has also experienced vendor compliance issues with vendors approved under the Local Small Business Reserve Program that had not been vetted through the State Department of Assessment and Taxation database. The Procurement Manager applauds a recent effort by the Office of Procurement to convene a taskforce to address the issues and concerns of Using Department staff.

Contract Compliance Actions and Terminations. MCPD has only terminated one contract between FY16 and FY18. In FY17, the Department terminated a contract by mutual consent. Staff report that the vendor was unable to meet the scope requirements for a private conference room at the requested time.

7. Department of Recreation

The Department of Recreation has a FY20 Operating Budget of \$44.9M and a staff of 490 FTEs. Operating expenses comprise 40% of the budget. The Department is organized into three divisions – Administration, Facilities, and Programs.

A. Recreation's Portfolio of Active Contracts

Recreation manages a portfolio of 400 contracts and works with over 350 different vendors. Recreation uses a variety of sourcing methods (see below); however, according to Recreation staff, open solicitations account for a large portion of Recreation's contract management portfolio.

- Open solicitations contracts for class instructors, bus transportation services and officiating services;
- Invitation for bid contracts for chemicals, pumps and pool accessories for swimming pools, recreation apparel and fitness equipment inspection, maintenance and repair services;
- Request for proposal contracts for fireworks displays, theater operations, and consultant services;
- Informal contracts for graphic design services, staging equipment, and special events supplies;
- Sole source contracts for software; and
- Bridge contracts for arts, crafts and classroom supplies as well as for exercise and kitchen equipment.

The next table shows Recreation encumbered \$15.8M in FY19 for current active contracts. In FY19, these dollars funded \$5.68M for 534 open solicitation contracts, \$5.8M for 7 public entity contracts and \$2.5M for 51 noncompetitive contracts approved by Council Resolution.

Recreation's Active Contracts and FY17-FY19 Encumbrances by Sourcing Group

Sourcing Group	# of Active Contracts	Encumbrances FY17	Encumbrances FY18	Encumbrances FY19
Informal Contracts	8	\$111,093	\$81,900	\$150,820
Invitation for Bid Contracts	12	\$663,617	\$653,979	\$785,253
Request for Proposal Contracts	5	\$286,000	\$350,000	\$357,000
Bridge Contracts	7	\$306,187	\$212,717	\$485,526
Non-Competitive Contracts	4	\$4,780	0	\$49,637
Open Solicitation Contracts	317	\$16,472,495	\$1,474,448	\$5,678,885
Public Entity Contracts	5	\$5,634,115	\$5,915,813	\$5,765,164
SUB TOTAL	358	\$23,478,287	\$8,688,857	\$13,272,321
Non-Competitive Council Resolution Contracts	42	\$7,846,291	\$9,081,809	\$8,157,912
GRAND TOTAL	400	\$31,324,578	\$17,770,666	\$21,430,233

Source: OLO and Office of Procurement, December 2019.

*Open solicitation contracts are exempt from Procurement Regulations and do not require encumbrance.

The table below shows Recreation's contracts arrayed into four broad groups by sourcing method, contract award value and competitiveness. The distribution of Recreation's contracts shows that open solicitations, by number of contracts, account for 81% of all active contract awards. The distribution of FY19 encumbrance shows open solicitations account for 36% of all encumbrances, compared to 56% for the group of bridge, public entity and noncompetitive contracts.

Active Recreation Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			%	% Distribution Encumbered Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	22	\$111,093	\$81,900	\$150,820	3%	0%	1%	1%
Tier II – Sealed Bids over \$100K	33	\$949,617	\$1,003,979	\$1,142,253	5%	4%	9%	7%
Open Solicitations	534	\$16,472,495	\$1,474,448	\$5,678,885	81%	64%	13%	36%
Tier III – Bridge, Public Entity, Non- Competitive, with No Cost Thresholds	72	\$8,384,430	\$8,653,166	\$8,811,276	11%	32%	77%	56%
TOTALS	661	\$25,917,635	\$11,213,493	\$15,783,234	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. Recreation's Contract Management Structure

Recreation has centralized the administration of its internal service functions (including human resources, contracts, finance, budget and customer service) in the Business Services Team, which provides daily overall operational support to the Department's Programs.

For contract administration, Program staff are designated as the contract monitors, with one Administrative Specialist III routinely advising all Program staff on selecting sourcing methods, defining contract specifications and addressing other procurement and contract related issues and concerns. In the post-award phase of the contract, Program staff are responsible for contract monitoring and staff from the Business Services Team are responsible for the administration, including the receipt, review and approval of vendor invoices. Business Services staff generally does not become involved with the monitoring unless there is an issue. The table below lists the contract management responsibilities of the entities in the Department's contract administration.

Recreation's Contract Management Structure

Role	Duties Include
Recreation Director	<ul style="list-style-type: none"> • Overall responsibility for the programs and operations of the Department's Business Operations, Programs and Facilities Divisions.
Administrative Specialist III – Business Services Team, Administration Division	<ul style="list-style-type: none"> • Advises Senior Managers and Program staff across Recreation's three Divisions on sourcing methods, contract terms and specifications, processing of solicitations, drafting of contract language and processing of all contract actions. • Works with Senior Managers and Contract Monitors to furnish timely written notice of contractor's performance issues and failures to the Director, Office of Procurement and to the County Attorney, as appropriate. • Maintains Official Contract Files with purchase orders, contracts, amendments, invoices, correspondence, monitoring notes and other pertinent documents. • Working on developing a documentation process and on developing facility maintenance sheets to track receipt of contractor services by facility. • Responsible for tracking expenditures; receipt, review, and approval of vendor invoices; and invoice payment processing.
Recreation Program Senior Managers, Program staff (Contract Monitors) and Administrative Staff	<ul style="list-style-type: none"> • Serve as liaison between the County and contractor. • Monitor vendor's services provided and/or goods received. • Responsible for initial response to customer complaints and for meeting with contractors to communicate and resolve minor issues. • Responsible for promptly notifying senior management of safety related noncompliance issues or of instances of multiple complaints that would trigger senior management involvement. • Responsible for initiating action to address unacceptable contractor performance and, if needed, working with Recreation's Contracts Unit and with the Offices of Procurement and the County Attorney to institute formal corrective actions for any performance issue with contractors.

Source: OLO and Recreation.

C. Recreation's Contract Monitoring Practices and Standards

According to Recreation staff, Recreation initially relies on careful drafting of the language in its contract to establish the monitoring structure for each of its contracts. However, staff report that the Department's wide range of products and services can make it challenging to find subject matter experts to review contracts for technical merit.

The specific methods for monitoring Recreation's contracts depend on the function of the activity in the contract. For example, the fireworks contracts for the 4th of July celebrations specify on-site supervision while monitoring of contracts for recreation apparel or chemicals for the County pools consists of inspections that occur when the goods are received. Some examples of the specific methods used by Recreation to monitor contracts include:

- Requirement that new vendors submit to background and/or reference checks;
- Reliance on feedback from class and camp participants and/or Recreation staff who are on-site to report issues with instructors or with maintenance contracts through multiple channels including through phone calls, email and online surveys; and
- Central staff will often visit a new instructor.

Further, the Department shares information about facility complaints with the Department of General Services and is working to develop a system to document and track maintenance contract work by facility.

Contract Compliance Issues and Terminations. The Manager of Business Operations states that Recreation’s follow-up to a vendor performance issue will vary depending on the severity of the issue. Generally, Program staff are responsible for communicating with the vendor and taking action to resolve minor complaints. Multiple complaints and safety issues trigger the involvement of senior management in the Department.

Recreation staff report that, in most cases, staff work informally with vendors to resolve issues. This typically includes a meeting to discuss the issue with a follow-up email to document the resolution. If an issue is severe, Recreation will issue a pre-cure letter.

Recreation has had 22 terminations of contracts from FY16-FY18. Staff report that most of the mutual consent terminations were due to the contractors' unavailability (moved out of town, received another job, etc.). Some contract terminations by mutual agreement are triggered by issues with insurance requirements. Examples of contracts that were terminated included performance issues with custodial staff at the aquatic centers due to off hours use and a termination of a contract with a social media vendor that refused to abide by contract language that gave the County control over the materials that were produced. Recreation staff state that when monitoring issues emerge, it is a common practice to strengthen the contract language for the subsequent contract to prevent a re-occurrence of that issue.

Contract Terminations, Department of Recreation FY16-FY18

	FY16	FY17	FY18
Terminated by Mutual Consent	8	3	0
Terminated for Default	10	1	0

8. Department of Transportation (MCDOT)

The Montgomery County Department of Transportation (MCDOT) has a FY20 Operating Budget of \$226.2M and a staff of 1,244 FTEs. MCDOT's organizational structure consists of three divisions – Transit Services, Transportation and Parking District Services – and 37 programs. MCDOT is responsible for a capital program that plans, constructs and maintains over bridges and roadways and an operating program that manages traffic operations and parking districts and operates the Ride-On bus system.

A. MCDOT's Portfolio of Active Contracts

MCDOT manages a portfolio of 550 contracts with 370 different vendors. According to MCDOT staff, the mix of MCDOT's portfolio of source selection methods varies widely by program area. For example,

- In the Highway Division, MCDOT uses (a) invitations for bid (IFB) for residential surfacing, slurry seal, milling in its roadway and roadside maintenance program; (b) open solicitations for snow removal; and (c) requests for proposals (RFP) for design and construction management services.
- In the Parking Districts, MCDOT uses IFB contracts for meter collections, enforcement, cleaning, maintenance and snow removal and RFP contracts for engineering and elevator maintenance.
- In the Traffic Engineering Section, MCDOT uses RFP contracts for consultant services and it uses IFBs for streetlight maintenance and signal maintenance construction services.²⁹

The table shows MCDOT encumbered \$184.5M for contracts in FY19, including \$87.2M for 187 IFB contracts, \$66.9M for 76 RFP contracts and \$11.6M for 204 open solicitation contracts.

MCDOT's Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Group

Sourcing Group	# of Contracts	FY17	FY18	FY19
Informal Contracts	13	\$183,640	\$97,530	\$175,903
Invitation for Bid Contracts	187	\$84,166,178	\$87,788,014	\$87,191,005
Request for Proposal Contracts	76	\$106,695,299	\$35,687,071	\$66,858,134
Bridge Contracts	20	\$6,271,477	\$5,310,199	\$13,552,602
Joint-Cooperative	5	\$2,965,581	\$3,860,605	\$1,520,957
Non-Competitive Contracts	32	\$2,579,135	\$2,110,744	\$2,429,589

²⁹ DOT also works closely with the Department of General Services to develop specifications for County bus purchases. DGS issues the contract and manages it while DOT provides user support.

MCDOT's Portfolio of Active Contracts and FY17-FY19 Encumbrances by Sourcing Group (Cont'd)

Sourcing Group	# of Contracts	FY2017	FY2018	FY2019
Open Solicitation	204	\$12,098,735	\$9,079,910	\$11,630,602
Public Entity Contracts	8	\$1,055,289	\$640,200	\$592,047
SUB TOTAL	547	\$216,015,334	\$144,574,273	\$183,950,839
Non-Competitive Council Resolution Contracts	3	\$455,735	\$557,574	\$584,394
GRAND TOTAL	550	\$216,471,069	\$145,131,847	\$184,535,233

Source: OLO and Office of Procurement, December 2019.

The next table shows MCDOT's contracts arrayed into three broad groups by sourcing method, contract value and degree of competitiveness. The distribution of MCDOT's contracts show the number of contract awards of \$100,000 or more are evenly split between contracts in Tier II that resulted from competitive sealed bids (263) and those in Tier III that were sourced through a public entity or non-competitive contract (274). By dollar value, the encumbrances of MCDOT's Tier II contracts accounted for 83% of all FY19 encumbrances, compared to the encumbrances for Tier III contracts at 16%.

Active MCDOT Contracts and FY17-FY19 Encumbrances by Value Tier

	# of Contracts	Encumbered Funds			%	% Distribution Encumbered Funds		
		FY17	FY18	FY19		FY17	FY18	FY19
Tier I – Up to \$100K	13	\$183,640	\$97,530	\$175,903	2%	0%	0%	0%
Tier II – Sealed Bids over \$100K	263	\$190,861,477	\$123,475,085	\$154,049,139	48%	88%	85%	83%
Tier III – No Cost Thresholds	274	\$25,425,952	\$21,559,232	\$30,310,191	50%	12%	15%	16%
TOTALS	550	\$216,471,069	\$145,131,847	\$184,535,233	100%	100%	100%	100%

Source: OLO and Office of Procurement, December 2019

B. MCDOT's Contract Management Structure

MCDOT's Deputy Director states that in each MCDOT Division or program, contracts are closely linked to the services MCDOT delivers. As a result, MCDOT decentralizes responsibility for the design and operation of the procurement process to its Division Chiefs or Sections. For example,

- In the Highway Division, the Administrative Services Coordinator -Section Chief and two staff serve as liaisons with the Office of Procurement and work closely with technical staff.
- In the Parking Divisions, one staff person in the Operations Section handles all the administrative contract duties and works closely with the project managers who handle the monitoring responsibilities.
- In Traffic Engineering, the ASC and the Section Chiefs work together to prepare the contract packages.

C. MCDOT's Contract Monitoring Practices and Standards

MCDOT uses an array of contract monitoring methods, including contract language with clearly stated specifications, terms and conditions, site inspections, desk reviews of contractor status reports and hotlines and other customer feedback mechanisms. MCDOT also regularly includes provisions for liquidated damages in its contract language. Some general observations about MCDOT's patterns of contract monitoring by program area include the following:

- Over 85% of the purchase orders MCDOT processes by dollar amount are payments for services associated with capital projects. Examples of these services include payments for architectural design, construction and engineering services. MCDOT staff state that MCDOT prepares bid packages in-house to maintain control over project costs. MCDOT's monitoring of the prices charged and service quality of the contractors are embedded in the project itself which progresses under the supervision of MCDOT project managers.
- MCDOT's monitoring to ensure contractor compliance for contracts for snow removal, tree maintenance and senior transportation programs rely on a combination of field inspections and customer feedback through phone calls or online submissions.
- MCDOT's monitoring methods for various parking operation services, e.g. parking cashiery, parking enforcement and garage maintenance, rely on random field inspections and desk reviews of invoices and reports.

Contract Compliance Issues and Terminations. MCDOT staff report that there are very few contract compliance issues with vendors and if there are, they are resolved quickly. MCDOT had one contract mutually terminated in FY17 because contractor costs increased significantly, creating extreme hardship for the company to honor contract requirements and pricing when the contract was extended.

Chapter III. Select Best Practices and Emerging Issues for Public Procurement Systems

A public procurement system structures purchasing decisions so that an organization efficiently acquires the quantity and quality of goods and services it needs when it needs them at the lowest overall cost. The effectiveness and integrity of a purchasing system contributes to public confidence in government operations because as much as one-quarter to one-third of an agency's total expenditures can flow through its purchasing system.³⁰

This chapter offers a summary of best practices for public procurement systems. Several organizations have contributed to the best practices knowledge base for public procurement systems. The best practices cited in this report draw from the organizations listed below:

- A 1995 **Government Finance Officers Association** guide, *An Elected Official's Guide to Procurement* ("the GFOA Guide");
- The **American Bar Association's 2000 Model Procurement Code** for State and Local Governments ("the Model Code");
- A 2019 **National Association of State Procurement Officials** publication, *State and Local Government Procurement: A Practical Guide* ("the NASPO Practical Guide") and another NASPO Contract Administration Best Practices Guide ("the NASPO Best Practices Guide"); and
- A series of publications from **The Institute for Public Procurement (NIGP)** including *The Public Procurement Guide* ("the NIGP Guide"), *Procurement Authority in Public Entities*, a description of five procurement models, and two Public Procurement Practice Standards on Outsourcing and Developing a Procurement Policy Manual.

OLO's review of the sources listed above identified overarching themes that frame OLO's review of government procurement and a framework for observations about instances where the County Government aligns with these practices and where gaps exist. This chapter has the following parts, organized as follows:

- **Part A, The Legislative and Policy Framework;**
- **Part B, Contract Management;**
- **Part C, Contract Administration;**
- **Part D, Delegation of Procurement Authority and Organizing Procurement Functions; and**
- **Part E, Outsourcing Arrangements.**

A. The Legislative and Policy Framework

Several of the procurement best practices guides provide direction on the legislative steps that governments should take to implement an efficient and effective procurement system. The GFOA Guide states that it is the duty of each jurisdiction's chief procurement official to regularly review the utility of procurement statutes and to recommend periodic modifications to improve the efficiency and

³⁰ Patricia C. Watt, *An Elected Official's Guide to Procurement* (Chicago: Government Finance Officers Association, 1995), vii.

effectiveness of the procurement function. GFOA also notes that Federal government procurement regulations, which are specified in the Federal Acquisition Regulations, flow through to states and localities receiving federal funds via procurement standards set forth in OMB circulars.

The Model Procurement Code for State and Local Governments provides a template for legislation regarding procurement, with a focus on broad general policy and addresses only a limited number of major provisions. The Model Code advises the use of regulations to implement statutory policies so that they could be more easily changed and modified. The NASPO Practical Guide states that the underlying philosophy of the model laws was that “the law should consist of clear, simple, broad legal parameters and authorities, leaving operational details to be filled in through separate implementing rules/regulations and guidelines.”³¹ The NASPO Practical Guide further offers a checklist that specifies the organizational structure, leadership responsibilities, and activities that a law should authorize. Key recommendations addressing the placement, authority, and responsibilities of the Chief Procurement Officer are displayed in the following exhibit.

Essential Elements of Successful Contract Management from NASPO’s Guide

#	Element
1	Place the Chief Procurement Officer and the central procurement office at an executive level, reporting directly to the public entity’s chief executive.
2	Authorize the Chief Procurement Officer to institute and maintain an effective program for all procurement of commodities, services, and construction within the public entity, and make that official responsible for the program.
3	Assign the Chief Procurement Officer and the central procurement office the responsibility for policymaking as well as for the implementation and oversight of the full spectrum of professional functions.
4	Designate the Chief Procurement Officer as the sole authority to delegate procurement authority and to determine the conditions for doing so.
5	Define the applicability of the law to include all of the public entity’s procurements.
6	Exclude blanket exemption for the purchases of an entire user agency or department; if exclusions are considered necessary, define them narrowly by types of commodities, construction, services sought and not so broadly as to exclude all the procurements of certain user agencies.

Source: NASPO, *A Practical Guide*, 41-42.

³¹ The National Association of State Procurement Officials, *State and Local Government Procurement: A Practical Guide*. Third edition. (Plantation, FL: J. Ross Publishing, 2019), 41.

B. Contract Management

The NASPO Practical Guide defines contract management as “the overall process related to ensuring the performance of a contract, including pre-solicitation activities through contract closeout.”³² Decisions made during the initial stages of the purchasing process, e.g., what services are needed and what tasks the vendor is expected to provide, determine the practices and resources needed to deliver an effective contract administration and monitoring system.³³ As the NASPO Practical Guide states, “Good contract management begins in the procurement planning and solicitation development stages when risks and responsibilities are identified and addressed.”³⁴ The components of effective contract management include well-written contracts with clearly communicated performance expectations, trained contract administrators, a system for monitoring and documenting contractor performance and a system for addressing any performance issues.

According to NASPO, states generally do not mandate statewide training for contract managers, but a 2016 survey found that more than two-thirds of state central procurement offices provided contract management training to state agencies. States also develop Contract Management Guides/Manuals and checklists to provide guidance to agencies. The exhibit on the next page displays 13 essential elements of successful contract management from NASPO’s *Contract Administration Best Practices Guide*.

Levels of Contract Management. The NASPO Practical Guide suggests viewing contract management along a continuum, depending on the nature of what the contractor is providing and the terms of the contract. The Practical Guide offers three examples to show different aspects of this relationship. These examples, ranked from a lower to a higher level of contract management responsibility, are listed below:

- Small dollar contracts generally require less contract management than large dollar ones;
- A one-time purchase of a commercial commodity will require less contract management than a one-time purchase of routine services because a services contract has a longer contract term and the contractor is often on site; and
- The purchase of nonroutine commodities or services requires more contract management than the purchase of commercial commodities or routine services.

³² NASPO, *A Practical Guide*, 406.

³³ In 2007, Amirkhanyan, Kim and Lambright proposed a framework for the decision to contract out and contractor performance where Stage 1 was the decision to contract out, Stage 2 was effective contract monitoring and Stage 3 was contractor performance. Their review of public management research identified those factors that influence a government’s decision to contract out and those factors that influence contract performance. They viewed effective contract monitoring, as what Kettl had referred to as the “smart buyer” challenge for government. Per Kettl, to be a smart buyer, a government agency must know: what service it wants to buy; who it wants to buy the service from; and the quality of what it has purchased. The authors suggested that “the new governance approach provide[d] an alternative to the prevailing focus on management in the public administration literature.” Instead, their framework [was] “intended to allow researchers to think more broadly about the contracting questions and see the connections between the initiation of the restructuring process and the outcomes of contracting out.” See Amirkhanyan, Anna A. et al., “Putting the Pieces Together: A Comprehensive Framework for Understanding the Decision to Contract Out and Contractor Performance” (2007). Public Administration Faculty Scholarship. 24.

³⁴ NASPO, *A Practical Guide*, 403.

Essential Elements of Successful Contract Management from NASPO's Best Practices Guide

#	Element
1	Preparing a Contract Administration Plan (CAP).
2	Convening kick-off meetings.
3	Scheduling regular meetings or on-site visits to customer agencies to monitor and discuss the progress of the contract and contractor's performance.
4	Training for best practices in contract management.
5	Establishing good communication between the central procurement office and customer agencies before, during and after the contract has been awarded and signed.
6	Allowing changes to specifications and terms and conditions within the general scope of the original contract.
7	Collecting meaningful data from user agencies.
8	Assessing contract risks and monitoring after the contract has been awarded.
9	Establishing performance metrics.
10	Implementing reporting tools and having processes in place for user agencies to report deficiencies to the central procurement office.
11	Using tracking tools to monitor spending patterns and whether a contract is working as intended.
12	Collecting data from users regarding contract performance and customer needs for existing contracts, which is critical when drafting specifications to include in the next contract for similar products or services.
13	Having procedures in place for expedient resolution of contract disputes and claims, encouraging informal resolution while ensuring that the contractor has a fair opportunity to be heard.

Source: NASPO, "Contract Administration Best Practices Guide,"
<https://www.naspo.org/ContractAdministrationBestPractices>, (accessed Dec. 12, 2019).

According to NASPO, some of the factors that demonstrate an effective contract management system include high contract user satisfaction; few if any contract changes; no claims or disputes; no increased costs, a contract file with the essential records of contract awards and performance; and no contract ambiguities.

C. Contract Administration

Contract administration activities include contract monitoring, managing changes to contracts, maintaining contract related documents, and addressing claims, disputes, and closeout activities. Contract administration responsibilities are commonly understood to “begin[s] at the point a contract or purchase order is executed.”³⁵ The NASPO Contract Administration Best Practices Guide organizes these activities into four steps, display in the exhibit below.

Contract Administration Steps and Key Activities from NASPO’s Best Practices Guide

Steps/Phases	Description and Key Activities
Kick off/ Pre-Performance Period	“Kick-off” meetings with the central procurement office, the agency and the contractor are held to discuss roles and responsibilities, to decide how performance will be evaluated and how best to set performance metrics, and to decide how to document and report performance. These are very informal discussions and they are not set up for all contracts.
Ongoing Maintenance for the Duration of the Contract	The contract manager ensures that all elements and planning tools that will guide implementation are in place. The central procurement office should work with the user agencies to define roles and responsibilities, to determine who is responsible for each activity and to agree on the monitoring methods and reporting tools that will be used to track performance.
Monitoring Contractor Performance, Documenting and Record-keeping	Monitoring and making sure that all involved parties are performing their duties in accordance with the contract is the key function of contract administration. Feedback is typically gathered through surveys, telephone or face to face inquiry. Documenting and maintaining a contract file is a good practice and all contract performance issues should be properly documented and included in the official contract file.
End of the Contract/Contract Closeout	Closeout activities can include documenting the contract from planning to contract completion, consistently reviewing contractor performance and promptly evaluating challenges and success. A Contract Closeout Checklist can ensure necessary steps in the process are completed.

Source: NASPO Contract Administration Best Practices Guide,.4-8.

³⁵ Watt, *An Elected Official’s Guide*, 53. The NASPO Practical Guide uses the term contract administration to “specifically describe[s] all activities taking place after the award of the contract.”

Roles and Responsibilities. Although the NASPO Practical Guide and the GFOA Guide both state that contract administration responsibilities begin after contract execution, they differ on whether lead responsibility for contract administration lies with the user agency or with the central procurement office.

According to the GFOA Guide, program staff in the using department have lead responsibility for contract administration tasks with the advice and support of procurement staff.³⁶ So, under GFOA's approach, if in the course of monitoring vendor performance, changes to the contract specifications or scope of services are needed, then program staff consult with procurement staff who have the authority to negotiate and issue a change order. Similarly, if program staff raise issues about vendor performance, they work with procurement staff to force corrective action by the vendor.

In contrast, the NASPO Practical Guide reports that "in most instances, the public procurement officer who conducted the procurement and awarded the contract will perform the duties of the contract administrator as well."³⁷ NASPO suggests that if a procurement and contract are for a specific user agency, appointing a user agency employee to serve as contract administrator is a common best practice.³⁸ But, NASPO emphasizes that this best practice does not transfer to the employee the procurement and contracting authority of the public procurement officer.³⁹

Both the GFOA and NASPO guides stress the importance of close working relationships and consistent and open communication. For example, the NASPO Practical Guide states that "successful contract administration requires consistent communication among the public procurement officer who conducted the procurement for the contract, the user agency, the contractor, and anyone else who is part of a contract administration team for the contract."⁴⁰

As detailed in the previous exhibit, under NASPO's recommended best practices, the public procurement officer and user agency should work together to determine:

- Roles and responsibilities and who is responsible for each activity;
- How performance will be evaluated, including milestones and performance metrics;

³⁶ The GFOA Guide's list of typical contract activities include: 1) Developing a checklist of contractor performance requirements and tracking them to ensure they are completed; 2) Preparing and filing vendor performance reports; and 3) Submitting requests to the purchasing authority for changes or extensions to the contract or for termination. See pages 53-55.

³⁷ The NASPO Practical Guide cites as an example the Michigan Procurement Policy Manual which "defines the term contract administrator to always mean the purchasing professional." The Michigan Manual specifies that the contract administrator's responsibilities include monitoring the contractor's performance throughout the life of the contract; scheduling and facilitating progress or performance meetings; resolving contract performance issues; and maintaining the contract file. NASPO further explains that the Michigan Manual also provides for the role of a program manager who is the representative of the user agency. The program manager's responsibilities, which can overlap those of the contractor administrator, include technical oversight and direction of the day to day administration of the contract; monitoring the contractor's performance and ensuring the contractor is meeting all milestones; serving as the day to day contact for contractor questions. See pages 410 and 411.

³⁸ The NASPO Practical Guide cites a provision in Arkansas's *Contract Administration Best Practices Guide* that requires a user agency to assign to a contract administrator when the initial contract amount or the total projected cost of the contract is \$1 million or more. See page 411.

³⁹ NASPO, *A Practical Guide*, 412.

⁴⁰ NASPO, *A Practical Guide*, 410.

- Monitoring methods;
- Reporting tools and processes; and
- Process for resolution of disputes and claims.⁴¹

Monitoring Performance and Addressing Compliance Issues. NASPO's 2016 Survey of State Central Procurement Offices showed that more than half record and track contractor performance. Many states require contractual usage reports, but the content and contractor compliance rates vary. NASPO's Guide states that poor or non-performance should never be accepted. It advises that regular communication with a contractor is key to the early identification of performance issues.

The Guide further recommends that a contract's terms and conditions include a process for managing issues and that central procurement offices provide written guidance to agencies on how to manage contract disputes and escalation procedures. It states that procedures to resolve problems and reach an agreement are preferred over legal remedies and it emphasizes that documentation plays an important role in cases of disputes, the assessment of damages or in contract terminations.

D. Delegation of Procurement Authority and Organizing Procurement Functions

In hierarchical structures, like bureaucratic public administration systems, delegated authority has an inverse relationship to public accountability. Delegated authority cascades down through the line management structure of an organizational entity and accountability flows upward. In contract monitoring and performance reporting, vendors report to contract administrators who report to management. Management, in turn, is accountable to the elected officials who are accountable to County taxpayers.

In 1995, the GFOA Guide recommended that procurement authority "be delegated to the extent practicable in order to make purchases as quickly and cost-effectively as possible."⁴² To strike a balance between the oversight of public expenditure transactions and the need for efficiency, the GFOA Guide suggested a system could be structured with tiered levels of delegation. For example, delegations for smaller purchases could be authorized more broadly and delegations for larger or more complex could be more limited. The GFOA Guide explained that officials to whom procurement authority had been delegated were held accountable for signing contracts on behalf of the government.⁴³

The GFOA Guide recommended that the delegation or procurement authority be in writing. It also recommended that delegation documents "specify (1) to whom (by name), and (2) by whom (by name) authority has been delegated, (3) the source of authority for the delegation, (4) the specific authority delegated (including any restrictions), and (5) the time period for which the delegation is effective."⁴⁴

⁴¹ NASPO, *A Practical Guide*, 412.

⁴² Watt, *An Elected Official's Guide*, 23.

⁴³ Watt, *An Elected Official's Guide*, 19.

⁴⁴ Watt, *An Elected Official's Guide*, 23.

In 2014, a National Institute for Government Purchasing Committee issued a position paper, “Procurement Authority in Public Entities,” which defined procurement authority as:

- “The power to award, or to approve the award of, legally binding procurement agreements (that is, contracts and purchases) on behalf of the public entity;” and
- “The power to modify (or amend) existing agreements” in the post-award environment.⁴⁵

According to NIGP, the system of checks and balances in a governmental organization consists of three distinct, separate functions: budget authority, procurement authority and signature authority.⁴⁶ NIGP views the independent exercise of procurement authority as an important piece of an entity’s overall system of internal controls⁴⁷ and strongly advocates for the “formal delegation of procurement authority to trained, public procurement professionals, through a Chief Procurement Officer.”⁴⁸

NIGP’s advocacy for formally delegated procurement authority is a specific example of a longstanding approach to public administration that relies on the establishment of clear lines of authority and accountability that are distributed across hierarchical organizations. For systems that rely on formal delegations of authority to operate effectively, an important corollary is the understanding that a formal delegation of authority is not an abdication of responsibility. Instead, the person who has the highest authority within the organization retains the responsibility and authority, even if they choose to delegate this authority to staff.

Structuring the Delegation of Procurement Authority. NIGP makes the case for a structured and narrow delegation of procurement authority as a best practice.⁴⁹ The benefits of a formal delegation of procurement authority to a Chief Procurement Officer that is limited to trained professionals include:

- Ensuring that public funds are awarded for best value in a manner that is transparent and impartial;
- Maintaining the integrity of professional values and practices; and
- Complying with public policy and law.

⁴⁵ Theodore Lucas et. al., *Procurement Authority In Public Entities: The Institute of Public Procurement on the Meaning of Procurement Authority and the Importance of its Effective Delegation and Use*. NIGP.Org. 2014. https://www.nigp.org/docs/default-source/New-Site/position-papers/procurementauthorityinpublicagencies_final.pdf?sfvrsn=2 (accessed February 11, 2020) 1.

⁴⁶ Lucas et al., *Procurement Authority*, 2. These three authorities are comparable but not the same. For example, as the authors explain “budgets allocate resources that are intended to achieve organizational goals. An approved budget, however, does not produce a contract, nor does it authorize a particular procurement method or the award of a particular contract or purchase. That is reserved to the exercise of procurement authority.”

⁴⁷ Ibid.

⁴⁸ Lucas et al., *Procurement Authority*, 1.

⁴⁹ Lucas et al., *Procurement Authority*, 4. The authors explain that when the ABA revised its 1979 Model Code in 2000 the revisions addressed major changes in public procurement, such as “the dramatic rise in the volume of purchases, the changing nature of goods and services available and the changing dynamics of markets and a need for more uniformity and fewer arcane procurement rules.” They note that the ABA’s Model Code cites the creation of an Office of the Chief Procurement Officer (CPO) as a “fundamental pillar” for the effective management of public procurement activities. They also note that a July 2014 NASPO survey found “a large majority have centralized regulatory authority for purchasing non-technology goods and services; 28 have centralized authority for purchasing technology goods and services ... [and] 43 states have a single Chief Procurement Officer.”

NIGP cautions if an organization pursues a decentralized procurement process, under the supervision of many people independently exercising divided procurement authority (especially by those who are not procurement professionals), it increases its exposure to financial, legal and reputational risk.⁵⁰

Like GFOA, NIGP recommends that an organization's establishment and documentation of delegated procurement authority be explicit and properly documented. It advises that a delegation document address and specify items such as the delegation's powers, limits, duties and the permission to sub-delegate. NIGP also advises that an entity clearly articulate penalties, including personal liability, for individuals who act without procurement authority.⁵¹

The Delegation of Procurement Authority and Organization of the Procurement Function in Large Organizations. In its Quick Reference: Top 10 Things to Know About Procurement, NIGP qualifies its strong commitment to the best practice of centralizing procurement authority under one Central Procurement Officer (CPO). It states:

*Best practice is to put all procurement processes under the authority of a Chief Procurement Officer (s) who possesses enough independence to ensure good checks and balances. Who gets to make final procurement processes strongly affects how business decisions are made and the quality of the results you get from procurements, so it is important to use people that have professional training in procurement. Large entities may benefit by employing separate CPOs for specialty areas such as Construction or Information Technology. Most entities should establish centralized units for procurement expertise to develop policy and strategy, coordinate purchasing expenditures to gain greater value and handle complex purchases directly. In turn, procurement professionals strategically train, monitor and delegate the ability to handle most ordinary transactions to others throughout the entity.*⁵²

In *State and Local Government Procurement: A Practical Guide*, NASPO advocates for a centralized procurement function with user agencies that view public procurement officers as essential facilitators. NASPO acknowledges that the pre-requisites for such an arrangement call for procurement officers having access to in-depth program knowledge and well-trained personnel plus adequate time to plan and implement a procurement solution. NASPO's Practical Guide identifies 11 key tasks, displayed in the next exhibit, that characterize the leadership work of a Chief Procurement Officer in strategic organizations.

⁵⁰ Lucas et al., *Procurement Authority*, 2.

⁵¹ See this March 2014 from the Mayor of the City of San Diego to the City's Department Directors for an illustrative example of a formal delegation of procurement authority (https://www.sandiego.gov/sites/default/files/legacy/mayor/pdf/memos/2014/memo140306_designationofauthority.pdf). According to the memorandum, under the City Charter for San Diego, the Mayor has the duty to supervise the administrative affairs of the City, including the duty to execute all contracts for departments under his/her control. The Charter also authorizes the Mayor to designate this power. See the following for a resolution approved by the Board of Directors of Sound Transit, which operates as the transit authority for the Seattle region (https://www.soundtransit.org/st_sharepoint/download/sites/PRDA/FinalRecords/2018/Resolution%20R2018-40.pdf). The authority is engaged in a \$54 billion expansion program. In September 2018, Sound Transit's Board of Directors updated its Procurement, Agreements and Delegated Authority Policy in response to steady growth in the volume of actions requiring Board approval.

⁵² Jon Walton, *The Public Procurement Guide for Elected and Senior Government Officials*. NIGP.org. 2016. <https://www.franklintn.gov/home/showdocument?id=30570> (accessed February 11, 2020).

Tasks of Chief Procurement Officers from NASPO's Practical Guide

#	Element
1	Establish a program of professional excellence.
2	Clearly state the procurement system's obligation to provide service and value to its customers – taxpayers, user agencies, and suppliers.
3	Define the management role of the Chief Procurement Officer and the central procurement office in decision making, in policy making and implementation, and in oversight of the full spectrum of procurement activities.
4	Strive to improve employee motivation, professionalism, and productivity.
5	Encourage innovation and ingenuity by a commitment to training and research for professional procurement staff and to program management within the user agencies.
6	Commit the central procurement office to working with user agencies and suppliers to achieve value for the funds spent in the acquisition of construction, commodities and services.
7	Commit the central procurement office to communicating needed revisions in the procurement law to executive and legislative leadership.
8	Support the use of technology to provide faster services and current, accurate procurement information.
9	Establishing continuing education and professional certification for the procurement staff.
10	Establish programs to measure the performance of the procurement system, in terms of both quality and quantity, and require communication of those measures to customers.
11	Establish and maintain open communication with the public, including the news media.

Source: NASPO, *A Practical Guide*, 36-37.

The 1995 GFOA Guide approached the issue of how an entity organizes its procurement functions and delegates its procurement authority pragmatically, stating that an effective procurement function is both centralized and decentralized:

- GFOA observed that responsibilities for policy, oversight and training are “almost universally” located in a central agency.⁵³ Other examples of responsibilities that are typically centralized include large-value complex purchases and bulk purchases.
- GFOA stated that decentralization occurs through formal delegation of authority in those situations where a central procurement office is unable to fulfill the purchasing needs of an operating department efficiently. Examples of responsibilities that are typically delegated to program departments or decentralized are high volume, low dollar threshold departments and types of complex procurements for construction or technology that can be entirely delegated to other departments.

GFOA stated that there is no right balance between centralization and decentralization. Instead, GFOA recommended that the balance should be what works best for each government. Some of the factors that determine whether a system is centralized or decentralized include the availability of trained staff, the adequacy of procurement information systems, and the attitude of central officials. GFOA observed that the balance requires periodic review and adjustments as circumstances change.

The centralized delegation of procurement authority. Recommended best practices issued by professional procurement organizations typically advocate for giving procurement officials a lead role in signing off on all contracts that fall under the purview of the public procurement system. They caution that decentralized systems may expose an organization to financial, legal and reputational risks. Professional procurement organizations identify two sources of these risks.

- The most commonly cited source is the exercise of procurement authority by contract administrators who are operating as untrained procurement professionals. The remedy calls for training and the creation of a professional credentialing system.
- A less commonly cited source of risk to a public procurement system stems from the bifurcated delegation of procurement authority to multiple department heads. Under this arrangement, the view is that the system of institutional checks and balances on procurement authority is incomplete because it lacks a separation of duties at the departmental policy level. This gap allows a department to pursue creative service delivery arrangements with technical contract provisions that commit taxpayer funds to outsourcing arrangements and programs to provide service programs that are in the public interest. When a Chief Procurement Officer is not in a position to provide upfront review and oversight of these arrangements before they become executed contracts, the system operates without an appropriate set of institutional checks and balances. As importantly, the system lacks a public accountability and oversight mechanism such as a high level official who could not only keep both elected officials and the public apprised of outsourcing initiatives that may require a higher level of public scrutiny but also conduct up front due diligence of proposed initiatives that require a substantial commitment of County

⁵³ Watt, *An Elected Officials Guide*, 22.

funds and/or a long term commitment with an ambivalent set of results. Finally, this official could sign off on both procurement and non-procurement contracts and agreements to ensure that the contracting process was conducted in a fair and impartial manner and that the provisions of the outsourcing arrangement provides the services needed while also protecting the interests of potential service recipients and County taxpayers.

The decentralized delegation of procurement authority. Other recommended best practices that support a more decentralized system take a different approach. This approach recommends a designated Chief Procurement officer and narrow but limited delegations of procurement authority to department level CPOs in large entities that are responsible for specialty areas such as Construction, Transportation or Information Technology. This approach favors embedding a chief procurement official in these departments where they function as the head of an established centralized procurement unit and it incentivizes the management of departments' procurement systems to be flexible and agile and responsive to industry. However, because these hybrid structures rely on a bifurcated delegation of procurement authority and a decentralized administrative structure, they are doubly exposed to the risks discussed earlier.

E. Outsourcing Arrangements

According to NASPO's Practical Guide, "outsourcing" is "an informed decision by an organization to contract outside of the organization for a product, service or business process that had previously been provided internally (in-house)."⁵⁴ Both non-core functions, (e.g., janitorial operations) and core functions (e.g. information technology may be considered for outsourcing).

Best practices recommend that, during the decision making stage of an outsourcing process, it is the responsibility of the procurement team to ensure that the process is competitive, fair, transparent and capable of delivering the best value for the public."⁵⁵ The exhibit below highlights the steps, guidelines and best practices recommendations for outsourcing arrangements synthesized from *Government Outsourcing: A Practical Guide for State and Local Governments*.⁵⁶

⁵⁴ NASPO, *A Practical Guide*, 318. This definition is from the NIGP Dictionary.

⁵⁵ NIGP, "Public Procurement Practice Standard – Outsourcing," NIGP.org. 2012.

https://www.nigp.org/docs/default-source/new-site/global-best-practices/outsourcing93acf4fbbe6365359624ff000097fdb4.pdf?sfvrsn=1dcf917a_0. (accessed February 10, 2010) 1.

⁵⁶ *Government Outsourcing: A Practical Guide for State and Local Governments: The Report of an Expert Panel*, School of Public and Environmental Affairs at Indiana University. January 2014.
https://datasmart.ash.harvard.edu/sites/default/files/2018-02/IU_SPEA_Government_Outsourcing_Report.pdf (accessed February 13, 2020.)

Outsourcing Arrangements: A Synthesis of Decision Steps and Best Practices

Step	Steps, Guidelines and Best Practice Recommendations
1	<p>Determine initial motivations for outsourcing. Outsourcing decisions are complex. To ensure a well-supported decision process, the initial step of an outsourcing process should include:</p> <ul style="list-style-type: none"> • A project statement that provides clarity of purpose and objective measures of success. • Transparency to identify potential conflicts of interest. • Policies and structures to ensure the outsourcing decision is independent and objective.
2	<p>Thoroughly assess the feasibility, potential costs, and potential benefits of the outsourcing initiative. Feasibility assessments that are comprehensive and objective should:</p> <ul style="list-style-type: none"> • Address a range of options, e.g., in-house, for profit, nonprofit and hybrid arrangements. • Compare options using complete and reliable cost, benefit and performance data. • Address long term effects on performance, innovation and employee morale. • Investigate the effects of outsourcing on the current market structure.
3	<p>Scope and plan the outsourcing project early on in the process. A full understanding of the project is a pre-requisite to an adequate cost assessment. Well scoped projects:</p> <ul style="list-style-type: none"> • Allow ample time to develop accurate descriptions of the services or functions. • Use Requests for Information to better understand suppliers' capabilities. • Use public forums, websites and other ways to facilitate frequent, systematic feedback.
4	<p>Develop clear, specific and effective contract requirements. Contract requirements should reflect organizational goals and missions. Best practices include the use of:</p> <ul style="list-style-type: none"> • Precise descriptions of a project's key aspects that are essential to its success. • Summary contract term sheets with key contract principles and requirements. • Contract specifications that leverage opportunities for operational efficiencies.
5	<p>Encourage competition at different stages of the project. To encourage competition through the project lifecycle, recommended best practices include:</p> <ul style="list-style-type: none"> • Aligning the project scope with the market and supplier availability to attract quality bids. • Avoiding overly narrow contract specifications that unnecessarily exclude bidders. • Limiting excessively long contract terms and offering renewal based on performance.
6	<p>Select the best suppliers and partners. A multi-step process to select partners should include:</p> <ul style="list-style-type: none"> • A rigorous and objective evaluation of potential suppliers and partners. • Use of clearly identified and ranked evaluation criteria in the method for evaluating bids.
7	<p>Spend adequate time negotiating and crafting the contract document. Best practices to negotiate and specify the final terms of the contract include:</p> <ul style="list-style-type: none"> • Ensuring policies exist to ensure the probity of the negotiations. • Assessing the government's negotiating capacity and bringing in expertise as needed. • Ensuring that contracts establish clear expectations, roles and responsibilities. • A contract performance assessment plan that ties payment to successful outcomes.
8	<p>Assess contract performance both during and at the end of the contract. Best practices for performance contracts include the use of:</p> <ul style="list-style-type: none"> • Policies that insulate performance evaluations from undue political influence. • Identified milestones, service level expectations, output measures and standards. • Dynamic approach to performance monitoring that incorporates lessons learned.
9	<p>Minimize service disruptions and other difficulties associated with transitioning at the end of the contract. Best practices recommend carefully reviewing and addressing:</p> <ul style="list-style-type: none"> • Transition issues in the original proposal submission and during the contract period. • Government capacity and cost issues if in-house delivery must be resumed. • Contract provisions for public ownership of project data and intellectual property. • Penalty, buy back and other clauses that commit government to a long-term relationship.

Source: OLO and *Government Outsourcing: A Practical Guide for State and Local Governments*

CHAPTER IV. Findings and Recommendations

Contract monitoring is the process of ensuring that a vendor provides services or goods as specified in the contract. Contract monitoring requires a disciplined, organized and ongoing approach to examine actual performance against the deliverables set out within the agreement. A jurisdiction's contract monitoring system is the structure, policies, and procedures used to ensure that the vendors meet their responsibilities. An effective monitoring system mitigates risk during all phases of the contract.

The Council asked OLO to review contract monitoring policies and practices in County Government. This chapter provides a summary of OLO's findings and recommendations.

FINDINGS

FINDING #1: The eight County Government departments OLO reviewed for this study managed over 3,000 active contracts in FY19. Open solicitations accounted for 28% of these contracts, while the remaining contracts were fairly evenly distributed by sourcing method.

The table below summarizes FY19 Office of Procurement data for total active contracts by sourcing method and department for the eight County Government departments with the greatest number of contracts. The data show there were 944 open solicitation contracts, driven by purchases in the departments of Recreation (534), Transportation (2014) and Health and Human Services (201), that accounted for almost 30% of all contracts. Open solicitations account for 81% of Recreation's contract portfolio, 37% of Transportation's portfolio, and 19% of Health and Human Services' portfolio.

The Department of Health and Human Services contracts accounted for nearly one-third of the total County contract database. Besides managing significantly more contracts than other departments, the Department's portfolio accounted for 69% of the database's non-competitive contracts and 59% of its community grant contracts.

	Total Active Contracts FY19	RFP	IFB	Open	Non-Competitive	Community Grants	All Other
DHHS	1,031	122	13	201	321	296	78
Recreation	661	9	24	534	3	51	40
DGS	645	117	285	0	28	108	107
MCDOT	550	76	187	204	32	3	48
DEP	148	71	12	0	15	0	50
MCFRS	122	8	44	0	19	0	51
MCPD	118	13	10	5	40	3	47
DHCA	113	10	8	0	10	41	44
TOTAL	3,388	426	583	944	468	502	465
Percent	100%	13%	17%	28%	14%	15%	14%

Finding #2: The County Government's organization of its procurement functions gives Using Departments lead responsibility for initiating procurements and managing executed contracts. How Using Department's organize their contract administration activities, including contract monitoring, depends on the staff available, the volume of contracts (number and dollar amount), the contracts' source selection methods, and the types of goods/services procured. For the departments with the most contracts, five of eight have a central procurement unit.

Montgomery County procures over \$1 billion dollars in goods and services across almost all departments. While the Office of Procurement provides a central clearinghouse for all procurement in the County, the Using Departments have lead responsibility for contract administration and monitoring. OLO's review of the eight County Government departments with the greatest number of contracts found variation in how departments structure the organization of their procurement responsibilities. This is because the missions and size of County departments vary greatly. The variety of customized systems demonstrates that Using Departments' have customized their organizations to be flexible and responsive and tailored to the characteristics of their contract portfolios.

County Department	Types of Contracts	Largest Type of Good/Services	Contract Administrative Structure
DHHS	All Types, Many RFP, Non-Competitive, Open Solicitation, Council Grants	Wide variety of goods and services across all Divisions	Contract Management Team supports program staff (contract monitors) in all Divisions; also involves Compliance Team, Fiscal Team, and Budget Team
Recreation	Majority Open Solicitations	Class instructors, transportation, officiating, and recreation equipment	Centralized in the Business Services Team, with support from program staff
DGS	All Types, but Majority IFB, RFP, Bridge Contracts, and Council Grants	Facility maintenance, County vehicles, and vehicle maintenance	Centralized in the Office of Contract Management, with support from program staff
DOT	All Types, but Majority IFBs and Open Solicitations	Road maintenance goods and services, snow removal, consulting, and engineering services	Decentralized within department; each Division manages contracts differently
DEP	All Types, But Majority RFP	Refuse collection and disposal	Centralized in Office of Deputy Director (Procurement Unit), with contract administrators in DEP Divisions; Division or Section Chiefs are significantly involved
MCFRS	All Types, but Majority IFB and Bridge Contracts	Vehicle maintenance and equipment for staff	Procurement Section in Division of Fiscal Management supports program staff (contract administrators) in all Divisions
MCPD	All Types, but Majority Non-competitive and Bridge Contracts	Equipment for staff and technology upgrades	Procurement Unit in Management and Budget Division supports program staff (contract administrators) in all Divisions
DHCA	Majority Competitive General Grants (Federal) and Council Grants	Streetscape improvement/landscaping and homebuyer education	Dependent upon Division (with program staff managing contracts), a majority of contracts managed by Grants Administration Section in the Finance Division

FINDING #3: Contract administrators in Using Departments have the primary responsibility for monitoring a contractor's performance. A contract administrator may or may not have contract administration as his/her sole job duty.

Contract monitoring has two key components: (1) reviewing and assuring the contractor's compliance with the technical requirements of the contract and (2) inspecting and certifying acceptability of the goods/services rendered throughout the period of performance in terms of quantity, quality, timeliness and cost. Contract monitoring helps ensure departments get what they need to support program objectives, provide a basis for payment, and reduce the risk of fraud and waste.

Once a contract is executed, a contract administrator/monitor in each using department is responsible for ensuring that the terms of the contract are being met. As front-line staff, contract administrators/monitors typically only notify department managers and/or the Office of Procurement if there is a significant issue.

The roles and responsibilities of contract administrators vary across and within departments, from staff who are solely responsible for administering/monitoring contracts to program staff who administer contracts as a small part of their overall job duties. Most departments reported that their contract monitors are program staff who monitor contracts as one of several job duties. This pattern shifts in larger departments, such as DHHS and DOT. These departments have staff who only monitor contracts and staff who administer contracts in addition to their other program management responsibilities.

FINDING #4: Using departments tailor their contract monitoring techniques, based on the type and size of the contract and staff resources available. In recent years, some Using Departments have centralized the procurement function within the department. These changes have increased management's role in contract administration and led to new contracting monitoring policies.

All using departments have implemented an individualized set of contract monitoring strategies and protocols that are part of a departmentwide contract management structure. Overall, departments use a mix of formal and informal practices to monitor vendor performance. Some departments have comprehensive written contract administration guidance for staff, such as DHHS' Program Monitoring Guidelines and MCPD's set of procurement directives, while others rely on more informal approaches.

All departments use some combination of the following monitoring practices:

- **Clear contract language.** When drafting solicitations and contracts, Using Department County staff work to ensure that the contract language is clear regarding the scope of services, the timing of the services or deliverables and the requirements for vendor reports in order to assess compliance. Staff routinely revise language for subsequent solicitations to incorporate "lessons learned."
- **Site visits.** All departments conduct site visits for contracts that require them. Often the number of site visits is dependent upon the type and value of the contract, the history with the vendor, and the good or service provided.

- **Documentation.** Most contracts, especially high value contracts, require numerous types of documentation from the vendor on performance and expenses. Further, Using Departments' protocols often require staff to document performance through contract monitoring forms.
- **Requiring multiple levels of review for invoice payment.** Several departments require that each contractor invoice undergo at least two levels of review, including MCPD (with one being an Assistant Chief) and DEP (which usually requires three reviews). MCPD also has developed an in-house SharePoint system that incorporates a set of checks and balances into the design of the workflow for vendor invoices and payments.
- **Coordination between central procurement teams and program staff.** For all departments with a centralized team, staff report that program staff work constantly with the department's centralized procurement staff. In particular, DGS' Office of Contract Management holds monthly meetings with division staff to review the contracts under management.
- **Reliance on feedback.** Several departments rely on feedback from stakeholders to monitor the performance of contracted vendors. For goods or services that go directly to the public, departments work to ensure that multiple channels exist to receive information about stakeholders' perceptions and experience (phone calls, emails, online surveys). Recreation is one department that relies on the public for contract monitoring; staff are not able to attend all classes that are contracted so they rely on participant feedback.

FINDING #5: All eight Using Departments report that compliance issues are rare, and that staff work informally and collaboratively with vendors to resolve issues when they occur. Using Departments identified a few cases where the Using Department and Procurement pursued a formal process for corrective action because the initial noncompliance resulted in an unsafe situation or the noncompliance continued.

As stated earlier, a contract administrator or monitor in the Using Departments is primarily responsible for the oversight of the delivery of goods or services by contract vendors. Using Department staff in all eight departments report that vendor noncompliance is not a significant issue – vendors provide most of the goods and services that departments purchase in a timely manner.

If the issue creates an unsafe situation that puts the public at risk (i.e. food not being delivered, public safety vehicles not having gasoline, etc.), administrators in the department immediately involve their managers and the Office of Procurement to resolve the situation.

When an issue with noncompliance arises (due to either non-performance or poor performance), all departments reported that, unless the noncompliance results in an unsafe situation, the contract administrator/monitor first works informally with the vendor to address the problem. In some departments, the contract administrator/monitor will consult with management and/or the department's central procurement team to discuss how best to address the issue.

Typically, a contract monitor first initiates a conversation with the contractor to make sure the contractor understands the problem. Next, the administrator and the vendor agree on a plan to address

the issue and bring the vendor back into compliance. County staff report that most vendors are responsive, and this informal approach usually resolves the issue.

In some cases, a vendor is unwilling to address an issue or unable to comply with the corrective action plan. When this happens, the using department will issue a formal written notice of the problems with recommendations and a timeline for corrective action. The contractor is required to respond in writing with a corrective action plan, which the contract monitor reviews and uses to monitor corrective action. Departments report that they will often consult with or notify the Office of Procurement and the County Attorney when they take formal action. The vendor who receives a formal notice can either address the issue and come into compliance or receive a pre-cure letter, which can result in contract termination.

FINDING #6: According to Procurement Regulations, any contract termination must be completed by the contracting officer with approval from the County Attorney.

According to *Chapter 11B.00.01.12 Contract Termination* of the Procurement Regulations, contracts can be terminated in one of three ways:

- Terminated for default if the contractor materially breaches the contract;
- Terminated for convenience at the option of the County if the termination is in the best interest of the County; or
- Terminated by mutual consent of the parties under special circumstances.

In order to begin a termination, the Using Department must provide the contracting officer (Office of Procurement) with documentation demonstrating a material breach of contract. If the contracting officer finds the vendor in default, a written notice to cure the default is required unless it poses an “immediate threat to life, health, or property,” after which it can be terminated immediately. The County Attorney must approve the notice to cure and the issuance of a termination for default. The same process occurs for all three types of terminations.

FINDING #7: There were 56 contract terminations between FY16 and FY19. About three of every four contracts were terminated through mutual consent.

OLO reviewed contract terminations for fiscal years FY16 through FY18 in eight County departments and found that there was a total of 56 contract terminations (see below). The Departments of Health and Human Services and Recreation had the most terminations, with 21 and 22 terminations respectively. Together, they accounted for 77% of all terminations over that two-year period.

Department	Terminations FY16 to FY18	
	Default	Mutual
HHS	0	21
DGS	3	6
DOT	0	1
MCFRS	1	1
MCPD	0	1
Recreation	11	11
DHCA	0	0
DEP	0	0
Total	15	41

According to the Office of Procurement and the Using Departments, contracts are terminated for many different reasons. Some examples include: a vendor who no longer provides the services requested because they retired or moved out of the area; a vendor who was hired by the County or returned to work for the County; a new contract was executed with a vendor for same services; or a vendor let their insurance lapse. Few contracts were terminated because of performance issues; these contracts could have been terminated by default or by mutual consent.

FINDING #8: The eight County departments that OLO interviewed deploy many of the best practices recommended by organizations of procurement and finance professionals.

Best practices recommendations for public procurement systems from several professional organizations are designed to strengthen the effectiveness and integrity of public purchasing systems. They recommend vesting procurement authority in one individual and implementing a contract management system that relies on written guidance, trained administrators, open lines of communication, clear contract terms, performance and reporting metrics as needed and the early identification and informal resolution of performance issues.

Several organizations, including the Government Finance Officers Association, the American Bar Association, the National Association of State Procurement Officers and the Institute for Public Procurement, have contributed to the knowledge base of best practices for public procurement systems. Their recommendations strive to strengthen the effectiveness and integrity of public purchasing systems in recognition of the critical contribution they make to public confidence in government operations.

The **legislative guidance** from best practice organizations regarding the organizational structure, leadership responsibilities and activities that should be authorized in law recommends: 1) establishing a

chief procurement officer and a central procurement office that is assigned the responsibility for policy making, implementation and oversight of the full spectrum of professional procurement functions; 2) designating the Chief Procurement Officer as the sole authority to delegate procurement authority and to determine the conditions for doing so; and 3) broadly defining the applicability of the law to include all of the entity's procurements and to exclude blanket exemptions or narrowly define any necessary exemptions.

The **contract management guidance** recommends: 1) recognizing how decisions made in the initial stages of the purchase decision affect the resources needed to manage and administer the contract; 2) developing well written contracts with clearly communicated performance expectations; 3) deploying trained contract administrators; and 4) instituting systems for monitoring and documenting contractor performance and a system for addressing performance issues.

The **contract administration guidance** recommends: 1) establishing close working relationships and consistent and open lines of communications between the contract administrator, the vendor and the procurement unit; and 2) agreeing upfront to the monitoring methods, performance measures and reporting requirements that will be used to oversee a vendor's performance and 3) providing written guidance to agencies on how to address performance issues and manage contract disputes when they arise. Regular and ongoing communication is key to the early identification and prompt resolution of performance issues which are best resolved through informal means.

OLO found the eight departments regularly use a combination of best management practices such as using clear contract language, conducting site visits, requiring documentation and reports and requiring multiple levels of review for invoice payments. Using Departments also provided examples of performance monitoring that relied on feedback from stakeholders and described efforts to ensure open lines of communication both internally within the department and externally with the Offices of Procurement and the County Attorney.

The one significant area OLO found that the County government could improve the lack of formal delegation of procurement authority. Professional procurement organizations' recommendations on the delegation of procurement authority and the organization of the procurement function advocate for one of two distinct approaches, both with benefits and drawbacks.

- The centralized delegation of procurement authority, which gives procurement officials a lead role in signing off on all contracts that fall under the purview of the public procurement system.
- The decentralized delegation of procurement authority, which gives a designated Chief Procurement limited power and delegates procurement authority to the department level.

RECOMMENDED DISCUSSION ISSUES

Montgomery County Government purchases approximately \$1B annually in goods and services from private entities and its nonprofits partners. OLO's review of eight County department contract management systems found the eight departments with the most contracts under management together manage over 3,300 contracts that encumbered almost \$659 million in FY19. Of these eight departments, DHHS, which is responsible for over 1,000 contracts that encumbered over \$136 million in FY19, is the largest user of contracted services.

OLO found County Using Departments contract management practices generally align with the best practice recommendations of professional finance and procurement specialists. The County Government's decentralized procurement structure gives Using Departments broad authority to develop creative outsourcing arrangements with private providers. Despite these management systems, there are concerns among public management and procurement professionals that the growing use of outsourcing arrangements (and the complex contractual arrangements they entail) are exposing governments to increased financial, legal and reputational risks.

Best practice recommendations of procurement professionals advise that elected officials work closely with Chief Procurement Officers and others to ensure that procurement systems remain agile and flexible so that they can keep pace with changing private sector business models and arrangements. The CAO currently has efforts underway to improve and strengthen the performance and oversight of the procurement system. As the Council receives updates on these efforts, OLO suggests that the Council raise the recommended discussion issues listed below.

Under the County's Charter, the public procurement system operates under the supervision of the CAO with the Director of Procurement serving as "the central procurement official of the County." Best practices legislative guidance envisions a chief procurement officer and a central procurement office that is assigned the responsibility for policy making, implementation and oversight of the full spectrum of professional procurement functions. Given the County's shared supervision of the procurement system, the Council may wish to ask the Executive Branch to answer the following questions:

- 1. Please explain how the County's shared supervisory structure of the procurement system works in practice, particularly as it relates to assignment of the systems policy making and oversight functions.*
- 2. Given the importance of public procurement systems keeping pace with changes to how governments structure their service delivery arrangements, what strategies would the County Government propose to ensure the Council is kept apprised of outsourcing arrangements that are in place or under development in the Using Departments that raise the County's exposure to legal, financial or reputational risks?*
- 3. The Baker Tilly report recommended that the County Government strengthen its delegation of procurement structure. Please provide an update on the status of this recommendation. As a best practice, some organizations rely on formal delegation of procurement authority documentation practices and they update this documentation on an annual basis. Others submit the documentation of this delegation of procurement authority to the Board for review and approval. Please provide your observations on the relevancy of either of these practices to the County Government's procurement system.*

CHAPTER V. Executive Comments

The Office of Legislative Oversight (OLO) shared final drafts of this report with staff from Montgomery County Government. OLO appreciates the time taken by staff in numerous departments to review the draft report and to provide technical feedback.

The written comments received from the Montgomery County Chief Administrative Officer are attached on the following pages.

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Andrew W. Kleine
Chief Administrative Officer

MEMORANDUM

March 2, 2020

To: Chris Cihlar, Director, Office of Legislative Oversight

From: Andrew W. Kleine, Chief Administrative Officer (CAO) *AWK*

Subject: OLO Draft Report 2020-5: Contract Monitoring in Montgomery County

Thank you for the opportunity to comment on the Office of Legislative Oversight's (OLO) Draft Report 2020-5: Contract Monitoring in Montgomery County. While the draft report did not have specific recommendations, it did include three discussion issues for Council's consideration.

Discussion Issue 1: Please explain how the County's shared supervisory structure of the procurement system works in practice, particularly as it relates to assignment of the systems policy making and oversight functions.

CAO Response:

Chapter 11B of the County Code establishes the authority of the CAO as it relates to the procurement system. It further identifies the Director of Procurement as the central procurement officer for the County for the procurement of goods, services, and construction as well as sale or other disposal of surplus, under the supervision of the CAO. The CAO still retains authority for overall County policy matters and auditing of those requirements. 11B of the Procurement Regulations then delegates procurement authority to the Director of Procurement, who may re-delegate as applicable. The Procurement Director oversees the day to day workings of the process, considers strategic changes, identifies and implements improvements to the process or general policy changes, coordinates with other core departments as needed and provides for contracting delegation within the Procurement office for effective and efficient management of the overall operations. Although the day to day supervisory responsibility of the procurement system belongs to the Procurement Director, waivers to the Regulations are approved by the CAO.

Discussion Issue 2: Given the importance of public procurement system keeping pace with changes how governments structure their service delivery arrangements, what strategies would the County Government propose to ensure Council is kept apprised of outsourcing arrangements that are in place or under development in the Using Departments that raise the County's exposure to legal, financial or reputational risks?

CAO Response:

The County currently manages over a billion dollars in fiscal year contracting actions within the procurement process. Many contracts, large or small may represent various risks. The County ensures appropriate reviews with the Office of the County Attorney, Finance and the Office of Procurement to address these. To ensure transparency, all solicitations are publicly posted, contract information is shared on dataMontgomery and actions before the Contract Review Committee are made accessible within the County. The Council is able to access this information. In addition, Internal Audit reviews contract risk areas as part of its regular plan and this information is made public. Generally, if there are actions that present challenges, those have generally been shared informally with Council, as needed and as appropriate.

Discussion Issue 3: The Baker Tilly report recommended that the County Government strengthen its delegation of procurement structure. Please provide an update on the status of this recommendation. As a best practice, some organizations rely on formal delegation of procurement authority documentation practices and they update this documentation on an annual basis. Others submit the documentation of this delegation of procurement authority to the Board for review and approval. Please provide your observations on the relevancy of either of these practices to the County Government's procurement system.

CAO Response:

The County has fully implemented the recommendation of the Baker Tilly report. On April 17, 2019, we issued a Delegation of Authority Matrix relating to specific contract and agreement functions, consistent with the contract and payment activities for which department/offices are responsible. The Matrix (attached) was developed in conjunction with the Office of the County Attorney, the Department of Finance and the Office of Procurement, and was issued to all Department and Office Directors to document current delegations of the authorities referenced in the Matrix. Effective as of the date of issuance, any further re-delegation of any of the referenced authorities, either on a short-term basis (such as when the Director of the department/office is scheduled to be out of the office) or on a longer-term basis, must be documented, with the documentation either being retained by the department/office or forwarded to the appropriate official, as reflected in the Matrix. Departments/offices were required, within 30 days of the Matrix issuance, for any authorities that were currently re-delegated, to document such re-delegation and forward the re-delegation to the appropriate official, consistent with the Matrix. Departments/office were cautioned of the

need to ensure that appropriate segregation of duties is maintained if an authority was planned for re-delegation to another position.

The Matrix does not require an annual update. Any changes in re-delegations of authorities identified in the Matrix must be documented. Confirmation that only the individual with the delegated authority to approve a contract/agreement action on behalf of a department/office is conducted as part of the internal controls and processes performed by, as appropriate, either the Office of Procurement or the Office of the County Attorney. In addition, compliance with the April 17, 2019 CAO directive, policy is subject to confirmation through periodic auditing. The formal delegation of procurement authority is documented in the County's system. The initial authority is identified in the County Code and then the delegation is further defined in the Procurement Regulations. Contracting Officer delegation within the Procurement Office are updated with each newly appointed Procurement Director. The Delegation of Signature Authority Matrix documents delegation as described above.

Attachment

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Ash Shetty, Director, Office of Procurement
Pam Jones, Division Chief, Office of Procurement
Bill Broglie, Internal Audit Manager, County Executive Office

Delegation of Authority Matrix - Contracts and Agreements

PURPOSE: This Delegation of Authority Matrix has been developed to (a) document authorities for specific Contract and Agreement functions delegated to departments/offices, and (b) to establish requirements regarding documentation that must be maintained if such authorities are further re-delegated, either on a short-term basis (such as when the Director of the department/office is scheduled to be out of the office) or on a longer-term basis.			
Contracts under Chapter 11B of Montgomery County Code			
Authority			
<i>(NOTE: The authority to acquire goods, services, and construction under Chapter 11B is vested in the Chief Administrative Officer (CAO). The Procurement Regulations delegate this authority to the Director, Office of Procurement (or designee).)</i>			
Responsibilities of Using Department under Section 11B.02.01.03.2.2.1 of the Procurement Regulations (and sections specific to types of procurement/solicitation methods)	Delegation of Responsibilities/Authority Rests with:	Documentation of Subsequent Re-Delegation Must be Provided to or Retained by:	
Authority to sign on behalf of Using Department, including the following: request to issue a solicitation; request to execute a contract; contract modification; OSC membership recommendations and changes; and other contract or solicitation action as delineated in the regulations.	Director of Using Department's Office	Provided to Office of Procurement email: purn.jones@montgomerycountymd.gov	
Direct Purchases by Using Department under Section 11B.02.01.04.1.9 of the Procurement Regulations	Director of Using Department's Office	Retained by Using Department's Office (maintained by Director's Office)	
Informal procurement of construction, goods, or services with a total value of \$10,000 or less. Responsibility includes ensuring that purchases are not subdivided or "split" to procure under the \$10,000 limit.	Contract Administrator in Using Department's Office	Retained by Using Department's Office (maintained by Director's Office)	
Using Department Responsibilities under Section 11B.02.01.08 of the Procurement Regulations concerning determination that payment to Contractor is justified			
Determination that contractor's performance has occurred to justify payment under the contract (Ref: Provision 16 (Contract Administration) of the General Conditions of Contract Between County & Contractor (PMMD-45); A.18) "approve or reject invoices for payment."			
Agreements (including MOUs/MOAs and other Agreements Exempt from or Not Subject to Chapter 11B Regulations)			
<i>(NOTE: Final approval/execution authority for such Agreements rests with the County Executive, CAO or his/her designee. Ref: AP 2-4: Agreements between Montgomery County Government and Other Organizations.)</i>			
Authority			
Authority to sign on behalf of Responsible Department recommending approval	Delegation of Responsibilities/Authority Rests with:	Documentation of Subsequent Re-Delegation Must be Provided to or Retained by:	
Includes (1) Non-11B Contracts, to include memoranda of agreement (MOAs) and memoranda of understanding (MOUs); (2) Letters, letters of intent, and other documents relating to the acquisition or disposition of real property or any interest therein	Director of Responsible Department's Office	Provided to Office of the County Attorney email: TheHon.Abbott@montgomerycountymd.gov	
Responsible Department determination that payment to Party(ies) is justified	Director of Responsible Department's Office, unless otherwise designated within Agreement	Retained by Responsible Department's Office (maintained by Director's Office)	
Determination that party's performance has occurred to justify payment under the Agreement			
NOTE: The Using/Responsible Department must ensure that appropriate segregation of duties is maintained in any planned re-delegation of authority.			