

OFFICE OF THE INSPECTOR GENERAL CITY OF BALTIMORE



Isabel Mercedes Cumming
Inspector General

Investigative Report Synopsis

OIG Case # 19-0039-I

Issued: September 15, 2021



OFFICE OF THE INSPECTOR GENERAL
Isabel Mercedes Cumming, Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



September 15, 2021

Dear Citizens of Baltimore City,

The Office of the Inspector General (OIG) received a complaint from the Bureau of Procurement (BOP) regarding the failure of the City's former Auction Services vendor (Auction Company) to pay \$575,299 to the City for four vehicle auctions conducted between June and August of 2018. In 2019, during the investigation, the Law Department filed a civil lawsuit against the Auction Company and its owner (the Owner). The Law Department entered into a settlement with the Auction Company and the Owner in May 2021. Ultimately, between "good faith" payments made after the City suspended its contract and a one-time fee paid as part of the settlement, the Auction Company paid \$95,000 of the amount due, leaving \$480,299 in lost City revenue. The OIG delayed its report to allow the civil judicial proceedings to conclude.

Auction Services contract

The Auction Company was awarded the Auction Services contract beginning in January 2012. The contract was subsequently renewed twice, with the final Board of Estimates (BOE)-approved extension having expired in December 2016. However, the Department of Transportation (DOT) and the Department of General Services (DGS) continued to allow the Auction Company to conduct City vehicle auctions between January 2017 and August 2018 without a BOE-approved contract in place.

Under the Auction Services contract, the Auction Company conducted auctions on behalf of the City for abandoned or impounded private vehicles, decommissioned City-owned vehicles, and miscellaneous non-vehicle abandoned property and City-owned surplus property (excluding real property). It was the duty of the Auction Company to collect all auction proceeds and deposit the City's funds into a bank account held in trust. Then, after a complete reconciliation of each auction by the City, the City sent an invoice to the Auction Company for the amount due less the Auction Company's commission (3 to 4.5 percent) and administrative fees. The Auction Company was to remit the net amount due to the City within 15 days of each auction.

Failure to submit City's auction revenue

On August 13, 2018, the Director of Finance sent a Notice of Breach of Contract letter to the Auction Company for its failure to remit auction proceeds to the City and suspended performance indefinitely. The table below summarizes the outstanding auction amounts at the time the letter was sent.

REPORT FRAUD, WASTE AND ABUSE

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This public synopsis is only a summary of a more comprehensive report of investigation submitted to the appropriate City management official

Table 1: Outstanding Auctions

Auction Date	Gross Revenue	Net Due to City
6/27/2018	\$261,715.00	\$252,197.55
7/5/2018	\$96,025.00	\$90,268.34
7/18/2018	\$131,025.00	\$123,463.43
8/1/2018	\$116,275.00	\$109,370.31
Grand Total	\$605,040.00	\$575,299.63

The Owner met with City officials on August 22, 2018 to explain that he could not remit the outstanding revenue to the City because he had been in arrears for several years due to theft of auction revenue by Auction Company employees. The investigation found that the Owner had filed a police report in July 2016 accusing two employees of stealing more than \$27,160 in cash from City auctions. According to the Owner, after discovering the theft, an audit was performed which the Owner said revealed the employees had stolen approximately \$160,000. However, the OIG did not find that the Owner filed a subsequent police report for the additional amount he claimed had been stolen. Nevertheless, the two employees were charged with theft of the \$27,160 and acquitted at trial.

City Auction License

Under the City Code, the Mayor appoints auctioneers in the City and the Director of Finance issues auctioneer licenses. The Auction Advisory Board (AAB), which is comprised of three members appointed by the Mayor, investigates and interviews applicants for a City auction license and makes appointment recommendations to the Mayor.¹ Additionally, the AAB may investigate any act by an auctioneer that violates the City Code and recommend the suspension or revocation of an auction license.

Upon learning of the Auction Company's failure to remit proceeds to the City, the Law Department and Department of Finance provided notice to the AAB and requested a license suspension or revocation hearing. However, at that time, the AAB did not have three duly appointed members and the de facto chairperson was the Owner's mentor and former employer. Accordingly, the AAB could not hold a hearing and the Owner continued to hold an auction license and conduct private auctions in Baltimore City.

City's Civil Lawsuit

In March 2019, the Law Department filed a civil lawsuit against the Auction Company and the Owner for breach of contract and failure to remit payment. After delays, the City settled the lawsuit in May 2021. As part of the settlement, the Owner agreed to forfeit his auction license and to refrain from reapplying for 15 years. The Owner also agreed to pay the City \$25,000 to dismiss the lawsuit and the City's claim against his bond. Previously, throughout 2019, including while the litigation was pending, the Auction Company had made "good faith" payments to the City. Table 2 is a breakdown of all payments made after the Auction Company's contract was terminated.

¹ Baltimore City Code, Article 2, Subtitle 1.

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Table 2: Post-contract termination payments

Date	Amount
1/29/19	\$30,000.00
4/11/19	\$10,000.00
5/10/19	\$10,000.00
6/10/19	\$10,000.00
7/10/19	\$10,000.00
5/20/21	\$25,000.00
Grand Total	\$95,000.00

Lack of Controls

The investigation revealed a lack of City controls in the conduct of auctions. First, the Auction Services contract permitted the Auction Company to collect and deposit the auction proceeds itself—much of it in cash—without any immediate, on-site City oversight. City employees confirmed to the OIG that the Auction Company typically counted the money after each auction behind closed doors inside a recreational vehicle it owned, usually without any City representative.

Second, although the Contract specified that the Auction Company was to “collect all monies due the City and deposit them promptly in a separate bank account clearly indicating that the Contractor/Auctioneer is Trustee for the Mayor and City Council of Baltimore,” the Auction Company deposited the City’s money into its own business banking account. The Auction Company acknowledged commingling the City’s auction revenue with its own operating funds in its business account. This practice not only meant the City had no control over the account, but also that it could not verify whether the correct amount of money from each auction was deposited. The OIG did not find any evidence that the City had ever attempted to verify the Auction Company had set up a separate bank account to hold the money in trust as required by the Auction Services contract.

Third, the ability to audit and validate the Auction Company’s records was limited. The documentation from the Auction Company, DOT, and DGS pertaining to registered auction bidders and winning bid amounts was handwritten, making decipherability difficult. Similarly, the Auction Services contract required the Auction Company to audio record each auction with an “audio cassette recorder or similar device.” But the audio cassettes obtained by the OIG were antiquated, garbled, and impossible to understand.

Furthermore, the Auction Company conducted auctions on behalf of the City without a BOE-approved contract from January 2017 until the termination of the Contract in August 2018. Although the Auction Company acknowledged during the City’s civil lawsuit proceedings that it should have continued to abide by the terms of the expired contract, the Law Department explained the lack of a BOE-approved agreement made the City’s civil case against the Auction Company more difficult.

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Not the first time

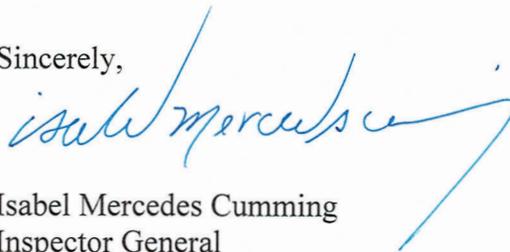
During the investigation, the OIG learned that this instance was not the first time an auctions contractor had failed to remit the revenue generated by vehicle auctions to the City. According to the Law Department, and as reported by *The Baltimore Sun* in July 1999,² an audit by the City Comptroller revealed that a previous auctions contractor failed to remit \$744,636 to the City. The Law Department filed a civil lawsuit against that previous contractor, resulting in a judgement against the company and payment to the City of \$708,518. The OIG review did not confirm what controls, if any, were put into place after that event.

Auctions moved online

After terminating its contract with the Auction Company, the City contracted with a new auction vendor to conduct the auctions online, eliminating the need for handwritten paper records. However, the new vendor's contract appears to continue to allow the contractor to take custody and control of the City's revenue after an auction and before remittance. Given that two previous auctioneers had control of the City revenue following an auction and both failed to remit a substantial amount of that revenue to the City, the OIG requested for the City to consider having buyers at each auction remit payment directly to the City immediately after an auction. Then, the new contractor could invoice the City for its commission and fees.

The Law Department, in consultation with the Mayor and City Administrator, provided a response to the complete OIG report of investigation provided to management. The response is attached to this letter.

Sincerely,



Isabel Mercedes Cumming
Inspector General

Cc: Hon. Brandon M. Scott, Mayor
Hon. Nick J. Mosby, City Council President
Hon. Bill Henry, Comptroller
Honorable Members of the City Council
James L. Shea, Solicitor

² *City sues to recover money from auction of surplus cars; Contractor's attorney disputes amount owed*, *The Baltimore Sun*, July 8, 1999, available at: <https://www.baltimoresun.com/news/bs-xpm-1999-07-08-9907080218-story.html>

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