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Office of Inspector General
640 City Hall

Synopsis of OIG Final Report #101399-106 (DOT/Office of the City Council President)

Hon. President and Members of the City Council
400 City Hall

10/09/2010

Attached please find a synopsis of the Office of the Inspector General's (OIG) Final Report concerning contract and contractor management by the Department of Transportation and the Office of the City Council President. The investigation indicates the manner and processes used to authorize a contractor's dual work assignments and compensation were not in compliance with certain provisions of the City rules and procedures governing contracts and contractors. Further, that the effect resulted in a circumvention of the powers and authority of the Board of Estimates pursuant to Administrative Policy 212-1, Part II.

The DOT responded to the 07/21/2010 Draft Report of Investigation on 08/10/2010 with several concerns and suggestions for follow-up or clarification. As a result of the responses the OIG conducted an additional interview and clarified other points. The Department of Human Resources also submitted a memorandum dated 08/5/2010 citing general agreement with the OIG's Draft Report and making other valuable observations. The City Council President's Office responded to the OIG's Final Report on 10/05/2010 concurring significantly with the report.

The OIG remains committed to providing independent investigations and audits in a manner that provides for increased transparency of governance, a solid foundation for meaningful policy review, and a platform for staff accountability.

Attachment

DNM/

cc: OIG Admin/Case file

E:/mcclintock/public synopsis/IG 101399-106 mem-council

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OFFICE OF THE INSPECTOR GENERAL BALTIMORE CITY

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Synopsis of the Officer of Inspector General's Report #IG 101399-106

Department of Transportation and Office of the City Council President Contract Management

On 05/24/2010 a contractor specializing in computer services was interviewed regarding an unrelated investigation. During that interview the contractor (hereinafter "Contractor") indicated that he was working under a Department of Transportation (hereinafter "DOT") contract but was also performing services to support the City Council President's website. Further, the contractor indicated that he had received overtime on occasion for his services. Recognizing that most personal service contracts are developed and implemented by specific departments for services provided to, and paid for by, that department a preliminary inquiry was initiated to review the specific contract, funding source, and ability to earn overtime.

Contractor - Contract and Pay Issues

Initially the Contractor's contract was reviewed to assess what conditions existed concerning work type, location, and pay, among others. The following provisions were noted:

- The contract was initiated on 08/19/2009 for a period of one year at the rate of \$40.92 per hour for 7.33 hours per day, Monday through Friday, for a total of 1833 hours per annum.
- The Contractor would work under the supervision of DOT Information Technology Chief.
- The Contractor's duties included providing a variety of technical engineering functions: installing, configuring existing servers/directories, identifying approaches that leverage resources while providing economies of scale, and verifying completion of scheduled jobs, such as backups, etc.
- The Agreement specifically stated that the Contractor is "not entitled to receive health benefits, paid holidays, vacation leave, personal leave, compensatory time, or any other City benefit, except Workers Compensation coverage.

A review of payroll records and attendance logs concerning the Contractor was conducted with the following points/issues being identified:

1. Payroll records reflect that the Contractor was paid a net sum of \$69,967.21, which is below maximum of \$74,969.70 allowable under the contract.
2. The contract approved by the Board of Estimates (hereinafter "BOE") authorized the funds to be drawn from account number #3001-000000-2300-2487-601009. Payroll and E-Time documents indicate that funds were drawn from a total of six

funds as follows:

- #3001-000000-2300-2487-601009: This DOT account is the designated funding source as approved by the BOE and is identified as Motor Vehicle/Administration/Contract Salaries. This fund code was used for pay ending date 09/4/2009 to 06/24/2010 and resulted in compensation in the amount of \$49,996.50.
 - #3001-000000-2301-2498-601009: This is a DOT account that at the writing of the report had not been set up or approved by the BOE for the new fiscal year budget and would not be recognized until 07/31/2010. This fund code appears to be used for pay ending dated 06/30/2010 to present and resulted in compensation in the amount of \$4,067.45 for 66.40 hours of Regular Time and 38.00 hours of Leave Without Pay (hereinafter “LWOP”) - Excused.
 - #3001-000000-5010-3828-02-601005: This is a DOT account and is designated as Motor Vehicle/Highway Maintenance/Overtime Salaries/Wages/Activity: Snowstorm. This fund code was used for pay ending dated 12/25/2009 resulting in compensation in the amount of \$463.62.
 - #3001-000000-5010-3828-05-601005: This is a DOT account and is designated as Motor Vehicle/Highway Maintenance/Overtime Salaries/Wages/Activity: Snowstorm. This fund code was used for pay ending dated 02/5/2010 resulting in compensation in the amount of \$381.78.
 - #3001-000000-5010-3828-07-601005: This is a DOT account and is designated as Motor Vehicle/Highway Maintenance/Overtime Salaries/Wages/Activity: Snowstorm. This fund code was used for pay ending dated 02/19/2010 resulting in compensation in the amount of \$1,636.79.
 - #3001-000000-2300-248700-601005: This is a DOT account and is designated as Motor Vehicle/Administration/Overtime Salaries. This fund code was used for pay ending dated 4/30/10 resulting in compensation in the amount of \$695.44 for 11.20 hours at an overtime rate of \$60.38 per hour.
 - #1001-000000-1000-104800-601009: This is a City Council account and is designated as City Council/General/City Legislation/Contract Salaries. This fund code was used for pay ending dated 03/19/2010 through the end of his contract and resulted in compensation in the amount of \$3737.21.
3. Sign-In Sheets obtained from DOT and the City Council President’s Office reflects a minor discrepancy with actual E-Time details during the time pay period ending 03/19/2010 - present.
- That is, E-Time reflects that the Contractor worked 485.30 hours at DOT while payroll records indicate the Contractor was paid for 487.89 hours.
 - Additionally, E-Time records reflect the Contractor worked 86.0 hours in the Office of the Council President but was compensated for 91.33 hours from the City Council Budget.
4. A review of the Contractor’s Sign-In Sheets, which were only initiated on Monday, 12/28/2009, reflect a failure to routinely and accurately document his time.

5. The Summary Section of the Contractor's E-Time report indicates that he was paid 11.20 hours of overtime @ 1.5, which would not be authorized under his contract, and which limits compensation to \$40.92 per hour. A review of payroll records does reflect he was paid a net sum of \$695.44 on 05/7/2010 for 11.20 hours, at an overtime rate of \$60.38 per hour. This pay exceeded that authorized by \$20.46 per hour.

Structuring the Arrangement

Interviews, emails, and records reflect that in 02/2010, shortly after the new Chief of Staff was appointed by City Council President Young, he initiated the process of securing the Contractor's assistance with the City Council President's website. Staff from the Office of the Council President contacted the Department of Human Resources concerning the viability of having the Contractor provide services above and beyond those he was providing to the DOT.

The DOT Human Resources Executive (hereinafter "DOT HR Executive") recalls the Office of the Council President's Chief of Staff (hereinafter "Chief of Staff") requested assistance with some personnel actions surrounding the transition of the City Council President. One of those actions involved the Contractor. The DOT HR Executive informed the Chief of Staff that she would have to read the contract and assess whether it was for full time, the hours, type of services, etc., in order to see if the Contractor would "be able to have a contract with Mr. Young's Office for the same period."

The DOT HR Executive believed that staff from the Office of the Council President's Office had checked with the Law Department and had been told it could be done. She did recall there being some potential conflict with the hours requested being the same and suggesting that a conversation take place between the Chief of Staff and the Director of Transportation at that time to discuss these areas. The DOT HR Executive had no specific knowledge regarding whether this conversation took place or not. However, she recalled speaking with the Law Department and being told that it was okay as long as the tasks were the same.¹ The DOT HR Executive believed at this point that it was feasible to proceed without a second contract, and that the time spent at the Council President's Office could be paid through the DOT, using funding codes from the Council President's Office.

FINDINGS, VIOLATIONS, AND DEPARTMENT POLICY OBSERVANCE

The management of contracts and contractors presents unique challenges to City government. Despite their prevalence throughout nearly every department and agency, the City-wide regulation and policy that clearly applies to their retention and management is contained mainly in AM 212-1. The OIG believes that certain aspects inherent in the retention and management of contractors, such as the typically short term contractor, the "at will" nature of the relationship, and the typically less transparent character of the retention processes, merits a substantial effort to assure compliance with AM 212-1 and the review steps contained therein.

¹ In conversation with the specific attorney the OIG determined that the attorney had no specific recollection of rendering an opinion on this issue. Additionally, she did not find any record of a request or response within her printed and retained email files, calendar or chronological journal. The attorney did indicate that she is often presented with issues in passing and most often requests the matter be put into a memo or email.

In conjunction with the aforementioned emphasis on compliance with AM 212-1, the OIG views the processes and procedures management uses to accurately record employee/contractor time, attendance, and work product as the foundation of effective auditing. The absence of efficient checks and balances often creates an environment conducive to fraud and must remain a prominent component of routine operations.

Findings:

1. The Contractor's contract was initiated and approved based on the need to perform certain functions for DOT.
2. No contract exists that supports the work the Contractor performed and is performing for the Office of the Council President.
3. The arrangements eventually settled upon, whereby the Contractor would provide services to the Office of the City Council President above and beyond those being performed for the DOT, were the culmination of discussions between Chief of Staff, other staff within the Office of the Council President and the DOT HR Executive and that the DOT Deputy Director, and the DOT Director were aware of the process.
4. During the period beginning on 03/09/2010 through the issuance of this report and while the Contractor was under contract with DOT, he was tasked with regular and routine duties in support of the Office of the Council President.
5. The arrangement was initiated by the Chief of Staff and agreed to or approved by senior staff of the DOT. Electronic correspondence indicates that both the Director and Deputy Director were aware of the matter. The Director indicated that he approved the Contractor's initial "temporary" services and support for the Council President's Office.
6. E-Time and attendance records reflect that the Contractor regularly performed these duties in addition to those performed for DOT.
 - a. While the DOT maintained the E-Time records for the Contractor, they reflected the hours worked for both the DOT and Office of the Council President.
 - b. E-Time and payroll records reflect that the Contractor routinely works a full schedule, or nearly so, for the DOT, as authorized under the contract.
 - c. E-Time and payroll records also reflect that the Contractor also works between 8 and 17 hours weekly for the Office of the Council President.
7. Payroll records reflect that the funds used to pay the Contractor were allocated to the respective entity for which the work was being performed.
8. Payroll records reflect that the Contractor was paid 11.33 hours of overtime @1.5 which corresponds to hours he worked for the DOT during the pay period ending 04/30/2010. There is neither a record of an overtime slip submitted by the Contractor nor any record of 11.33 hours worked during that pay period ending that would correlate with this.
9. It was determined that the DOT and the Office of the Council President did ensure that the funds used to compensate the Contractor for his services outside of the DOT

contract were from the budget of the Council President's Office and not those of DOT.²

10. The Office of the City Council President initiated the request for services of the Contractor via Chief of Staff for Council President.
11. The OIG found that the Contractor's services to the Office of the City Council President were not properly supported under his existing contract with the DOT and therefore had the effect of circumventing AM 212-1, Part II, for the following reasons:
 - a. The existing contract was specifically for services to the DOT, not the Office of the City Council President.
 - b. The hours worked were exclusive of those covered under the existing contract.
 - c. The services provided, while IT based, were not those of a network engineer as he was contracted; rather, they were of the nature of a web developer.
 - d. While providing services to the Office of the Council President, he was no longer under the control and management apparatus of the DOT.

Department Policy and Policy Observance:

Administrative Manual Policy AM 212-1, Part II, "Contractual Agreements – Other than Retired City Employees" sets forth the regulations governing contracts and contractor retention and sets forth the basic tenet that "Individuals . . . may be engaged to render services to the City on a contractual basis when the requesting agency is able to establish a need for the individual's services and the individual possesses the qualifications necessary to satisfy the requirements of the services to be rendered."³ Further, the policy sets forth that:

An individual providing such services must enter into a contractual agreement with the Mayor and City Council of Baltimore . . . [and that] agreements are contingent upon funds being available and require the approval of the Board of Estimates . . . prior to the individual starting to perform any work under that contract."⁴

The policy regulates the approval process and requires that a series of steps must be taken that include review and approval from the Law Department, the Department of Finance, Bureau of the Budget and Management Research, the Department of Personnel, the Expenditure Control Committee (ECC), and the BOE.⁵

Department of Transportation

The OIG determined that the DOT was compliant with the requirements of AM 212-1, Part II, as it related to the retention process and basic contract requirements. However, the eventual decision to assist the Office of the City Council President's Office in

2 While the supporting documentation regarding time and attendance of the Contractor were not fully complete it does appear that DOT did not fund work performed outside of the Department.

3 AM 212-1 Part II. See section: Scope.

4 Id. See section: Overview.

5 Id. See section: Steps For Necessary Approval.

securing and supporting administratively the services of the Contractor under the auspices of the DOT contract had the result of circumventing AM 212-1, Part II.

The OIG found no foundation existed for the terms of the DOT contract to be extrapolated or assumed by the Office of the Council President. AM 212-1, Part II's requirement that the "requesting agency" establish a need for the contractual services and comply with the established review process places the final approval for such contractual arrangements squarely with the BOE. Therefore, it is not within an agency's or department's ability to authorize one of their contractors to provide services to another department or entity. There may well be times where it is not only prudent but necessary to temporarily loan staff and resources during critical times; this is not the case in the matter under review.

During the course of the contract, the following additional points were noted:

1. The DOT maintained the Contractor's E-Time report, which was a combined document in the sense that it tracked the hours worked for both the DOT and the Office of the Council President. Through this mechanism, it is clear that DOT was aware of the ongoing nature of the services the Contractor was performing to the Office of the Council President and that through them he regularly exceeded the weekly number of hours authorized under the existing contract. It is noted that the neither the total hours nor the maximum expenditure cap were exceeded.
2. Timekeeping and pay authorization errors were noted that resulted in overtime @ 1.5 pay for 11.33 hours and recordation as LWOP - Excused for periods in which the Contractor did not work. Contractor's are not eligible for LWOP and should not be designated as being in that status.

The OIG determined that the Contractor did routinely perform, or nearly perform, the full allotment of hours for the DOT that would be expected under his contract. In addition, that the services performed for the Office of the Council President did not seem to restrict his ability to perform fully his DOT obligations.

Office of the Council President

The OIG determined that the arrangement initiated by the Chief of Staff for the Office of the Council President, with DOT for the Contractor's services did not comply with AM 212-1, Part II. The OIG was unable to find a sufficient nexus between the functions legitimately performed under the contract with the DOT and those services provided to the Office of the Council President. Further, that since the Contractor was fully performing under the DOT contract, no foundation existed for the terms of the DOT contract to be extrapolated or assumed by the Office of the Council President.

The arrangement allowed the Contractor to perform services to the Office of the Council President on a regular and routine basis that were clearly outside of his existing contract. This is also supported by the fact that the Contractor was paid with funds from the Office of the Council President for the work that he performed on their behalf. Operating in this manner the Contractor was able to be paid via the existing DOT contract for additional services without requiring the development of an additional contract that complied with the requirements for approval set forth in AM 212-1, Part II, as follows:

1. Relevant policy requires that a requesting agency seeking to retain a contractor be able to establish a need for the services and that the individual possesses the qualifications necessary.

2. Contractual agreements must be submitted to and approved by the BOE prior to the individual starting to perform any work under that contract.
3. The efforts and coordination between staff of the Office of the City Council President and DOT to provide supporting material concerning timekeeping and account codes indicates a clear awareness of the extent and duration of the services provided to one entity under the auspices of the contractual arrangement with another.

RECOMMENDATIONS

1. *The OIG recommends that the Department of Transportation and Office of the Council President reevaluate the current system and process in place for management of contract employees.*
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The OIG does acknowledge that DOT routinely uses the services of the Department of Law as per Administrative Manual policy 212-1, Part II, for approval of contract language from a legal perspective. The OIG recommendation is not directed towards the legal analysis of the contract; rather, it is focused on the specific performance criteria, reporting requirements, and procedural process that the contractor must abide by. These non-legal issues form the foundation for DOT management's expectations of the contractor services.

Contract employees play a vital role in delivering many City services; however, it is incumbent upon all agencies and departments to ensure that contracts and contractors are effectively managed. The adoption of boilerplate contracts without sufficient parameters does not provide effective guidance to those responsible for the various aspects of contract management. The OIG recommends that any process implemented include components designed to ensure that the contract is drafted with specifics designed to provide real guidance to those responsible for supervision of the contractor; realistic and meaningful descriptions of the services to be provided, work locations, hours/timekeeping, etc., and lastly, that the process be fully compliant with existing policy and procedures.

2. *The OIG recommends that the Office of the Council President initiate an independent contract for the services of contractors who may be working under an existing contract with another City entity.*
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The OIG strongly recommends that in situations where an existing City contractor possesses the qualifications necessary to fulfill service needs of another City entity and/or to perform services outside the scope of the existing contract, that retention for those purposes be considered anew. Efforts to ride, assume, or otherwise adopt the existing terms of a contract eliminate the checks and balances provided by existing policy. Critical to the current process are the requirements to demonstrate a need, the allocation of funds, and the approval by the Board of Estimates.

It is also noted that the while the subject of this inquiry was a City contractor and not an employee, the City does recognize the issue of individuals working two positions concurrently. The approach to these concerns is set forth in Administrative Manual policy 200-1 "Concurrent City Employment Prohibition" and Personnel Manual policy 176-1 "Waiver to Concurrent City Employment Prohibition" which may also provide some guidance in this area.