

**Prince George's County, Maryland
Office of Audits and Investigations**

Office of Central Services

Review of Change Orders

January 2023



**Turkessa M. Green
County Auditor**

TABLE OF CONTENTS

	<u>PAGE</u>
Letter of Transmittal	
Audit Report.....	3-30
Department Response	31



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of Audits and Investigations

January 2023

The County Council and County Executive
of Prince George's County, Maryland

We have conducted a performance audit of the

OFFICE OF CENTRAL SERVICE'S CHANGE ORDER PROCESS

in accordance with the requirements of Article III, Section 313, of the Charter for Prince George's County, Maryland. Our report is submitted herewith.

We have discussed the contents of this report with appropriate personnel of the Office of Central Services and the Department of Public Works and Transportation and wish to express our sincere gratitude to them for the cooperation and assistance extended to us during the course of this engagement.

A handwritten signature in black ink, reading "Turkessa M. Green".

Turkessa M. Green, CPA, CIA, CISA
County Auditor

A handwritten signature in black ink, reading "Sylvia Singleton".

Sylvia Singleton, CIA, CFE, CICA
Audit Manager

Results in Brief

The Office of Audits and Investigations (A&I) conducted a review of County change order contracts with a focus on Capital Improvement Program (CIP) projects, but not limited to CIP, to determine whether “change orders” have been appropriately approved, applied, utilized, and calculated correctly.

Contracting and procurement is an integral part of County operations and has the potential for considerable risk to the County and its resources. Change orders are considered a part of a contract modification which is any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.

This report summarizes the findings identified by A&I staff as a result of the review of change orders.

The following major findings are addressed in this report:

1. Use of the Change Order process to extend the contract, after the expiration of the contract term, without competitive solicitation, at a cost of more than \$1 million dollars in one instance.
2. Failure to maintain updated and ratified delegated authority documentation which provides the Department of Public Works and Transportation (DPW&T) with limited procurement authority.
3. Failure to obtain adequate bonding coverage to cover the increased value of the contract as a result of a change order.
4. Failure to obtain proper approval from the Administrative Review Committee (ARC) for several change orders processed.
5. Overpayment of \$20,200 in retainage fees to the contractor.
 - a) Failure to maintain the Minority Business Enterprise Subcontracting Goals Report in accordance with County regulations.
 - b) Failure of the DPW&T to obtain a waiver from the Purchasing Agent, and for OCS to accept an MBE participation goal of less than the required percentage (40%) stipulated in County regulations at the time.
6. Failure to maintain adequate documentation in the form of the Master Resurfacing Report, which is the tool used for checking to ensure that work is completed within the parameters of the contract terms and conditions for road resurfacing.

7. Failure to disclose estimated bid quantities, even though DPW&T was aware of the full scope of work at the time of contract solicitation. This resulted in the issuance of two (2) change orders and one (1) contract modification after the contract was awarded, at a cost of \$2 million more than the original contract value.
8. Failure to comply with contract terms. The value of the change orders exceeded the 25% limitation as stipulated in the contract's scope of work. As a result, the contractor was paid approximately \$1.2 million over the contracted limitation.

Internal control activities are an important part of an agency's ongoing planning, implementation, and review of programs and services. They are essential for effective and efficient operations and proper accountability of Federal, State and County resources. For this reason, several recommendations for improving internal controls are made throughout this report.

Background

The Contract Administration and Procurement Division (CAP) within the Office of Central Services (OCS), under the guidance of the Purchasing Agent, is responsible for most of the County's major purchases and is primarily responsible for acquiring goods and services (professional, non-professional and construction) for all County agencies. CAP provides overall management and guidance for the County's purchasing functions in accordance with the legal authority established by Section 602 of the Charter and Subtitle 10A of the Prince George's County Code. All County agencies must follow the guidelines of the purchasing model detailed by the CAP staff, with the exception of the two (2) agencies with delegated procurement authority. The Department of the Environmental (DOE) has delegated authority for Stormwater management construction projects and the Department of Public Works and Transportation (DPW&T), has delegated authority for the procurement of goods and services related to roads and bridges. The majority of the Change Orders selected for review for this audit were processed for DPW&T.

The County's Procurement Regulations defines change orders as a written order signed by the Purchasing Agent or the Purchasing Agent's designee, directing the contractor to make changes, which the "Changes Clause" of the contract authorizes the Purchasing Agent to order, without the consent of the contractor. Change orders are typically issued based on an unforeseen issue/circumstance. Change orders are considered a part of a contract modification which is any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. Changes may occur when the County exercises the option to extend the contract period, change the scope of work, increase pricing based on a verified increase in manufacturing cost based on the Consumer Price Index. Modifications may also be made in the event of a price decrease. Change orders may be initiated by either the construction contractor or the County.

Explanation of the reasons for the change order may include, but is not limited to, errors

and omissions, defects in plans and specifications, differing site conditions, unusually severe weather conditions, request by the contractor, or request by the County. Explanation of all other impacts resulting from the change, with estimates of the costs involved and a copy of the Contractor's signed approval. The Change Order process is initiated when the need is identified by:

- i. Contractor giving notice of a change; or,
- ii. County official (inspector) observing conditions indicating the requirement for a change; including, but not limited to, constructability, latent condition, and/or emergency; or,
- iii. Designer, whether private consultant or in-house personnel, determine that the change is required to ensure the integrity of the design; or,
- iv. Agency Director determines that a change is required to incorporate construction not covered by the project plans and specifications.

The Inspector notifies the Project Engineer when he/she becomes aware of the need for a change order. An examination of alternatives for dealing with the indicated change is undertaken, a preferred method is selected, and the required design modification and construction cost estimates are prepared. If it is determined that an emergency condition exists, necessitating the change, an emergency Change Order shall be issued by the Project Engineer to the Contractor (after consultation with the Associate Director and the Director) to resolve the emergency condition and secure the work. Emergency Change Orders are considered emergency procurement as conducted in accordance with the provision of the County's procurement regulations. A Unilateral Change Order is issued if the County is unable to arrive at a negotiated agreement regarding a contract modification and attempts to have the Contractor sign a change order has failed. In this case, the Contractor is directed to perform the work and a Unilateral Change Order is issued. The Unilateral Change Order is processed in the same manner as a regular Change Order.

The change is recorded on the Change Order Negotiation Form (See **Appendix C** of this report for an example). The change order is a document that is reviewed for legal sufficiency by the Office of Law prior to consideration by the Purchasing Agent for approval and submission to the Administrative Review Committee (ARC) prior to the implementation of SPEED, which is the County's first electronic procurement platform. After the change order has been signed by the Contractor, it is processed through the ARC for signature by the Deputy Chief Administrative Officer (DCAO). (See **Appendix D** attached for the Construction Change Order checklist). If the proposed revised contract amount exceeds the original amount encumbered under the contract, then a revised purchase order (PO) and encumbrance documents are also attached for processing through the Office of Management and Budget (OMB) and the Office of Finance for the additional amount identified. A copy of the completed Change Order was sent to the Contractor and to the Office of Central Services (OCS) for record-keeping, upon signature by the designated County official.

During the period of our review, FY 2013 - FY 2017, the Administrative Review Committee (ARC) processed 109 change orders, for a total of approximately \$45 million. The majority of the sample Change Orders selected for our review were processed by the

Department of Public Works (DPW&T), and all were under the purview of the ARC process at the time. See the DPW&T high level Change Order process (**Appendix A** attached).

Administrative Review Committee (ARC)/eARC

The Administrative Review Committee (ARC) was formerly a committee that met on a weekly basis to review and discuss procurements that required the signature of a Deputy County Administrative Officer (DCAO). The ARC eventually stopped meeting weekly and decided to create an administrative process whereby five (5) agencies would participate in the review of procurements and used interoffice mail to obtain appropriate signatures. Those five (5) agencies were: the Office of Management and Budget (OMB); the Office of Finance (Risk Division); Office of Law (OOL), Office of the County Executive; and Office of Central Services, Contract Administration and Procurement (CAP). Sometime after the implementation of this process, an electronic process was created called “e-ARC”. This process followed the same approval path but created a way to seek approval via electronic signatures. This project remained as a pilot process only utilized by designated agencies. However, with the onset of the pandemic in March 2020, this pilot was extended to all user agencies. With the adoption of the County’s first electronic procurement platform, SPEED, the ARC and e-ARC processes have been folded into a centralized procurement system. These processes have been modified with administrative changes that will streamline procedures and result in faster turnaround times. Since the implementation of SPEED, contracts that require a DCAO signature are no longer referred to as being processed through the ARC. DCAO signature is now obtained in the SPEED’s Contract Workspace.

Change Order Process Using SPEED – Calendar Year 2021

In Calendar Year 2021, the Office of Central Services (OCS) implemented the County's new centralized cloud-based procurement, spend management and supply chain platform, known as SPEED. SPEED offers strategic sourcing and contracting capabilities to enhance the procurement process. The Contract Services Officer (CSO), Contracts and Procurement Division (CAP), OCS, is the point of contact for each agency, and individual procurement officers are no longer assigned to specific agencies. Prior to the Change Order request, a Requisition Form is supplied which includes the funds reservation information from the Office of Management and Budget (OMB), authorizing the Change Order. The Project Manager completes a contract request in SPEED and submits it to the respective CSO, for review and assignment to a Purchasing Officer (PO). Reviews and approvals are provided by the Purchasing Officer, Office of Law, the Contractor, and the Deputy Chief Administrative Officer (DCAO). Executed documents are provided to the requesting agency, and the Contractor, and are uploaded into the County’s financial records system (SAP) for final approval and release. See the new high level Change Order process utilizing SPEED (**Appendix B** attached).

Objective, Scope, & Methodology

The purpose of this review was to: (1) determine whether change orders are utilized appropriately; and, if not, (2) determine factors causing inappropriate change orders, and determine possible corrective action to improve the process.

To conduct this audit, we reviewed applicable County Administrative Procedures, including Office of Central Services (OCS) and individual agency operating procedures that utilize change orders. We relied on previous A&I process walk-throughs conducted as part of the Administrative Review Committee (ARC) audit, including representative agency's such as the Office of Law, Office of Finance, and the Office of Management and Budget (OMB). The ARC process was in place during the period that was audited, however, as previously stated, it has since been folded into a centralized procurement system (SPEED).

To determine the total population of all change orders, A&I obtained a master list of all of the Change Orders processed through the Administrative Review Committee (ARC) during the period FY 2013 through FY 2017, which resulted in a total of 109 items, with a total value of approximately \$45 million.

A&I stratified the population into three (3) tiers and then judgmentally selected 13 change order contract packages to test as follows:

Stratification:

- Tier 1 - > or = \$1,000,000
- Tier 2 - \$500,00 - \$999,999
- Tier 3 - < or = \$500,000

Contracts selected for testing:

- Tier 1 - 5 selections
- Tier 2 - 2 selections
- Tier 3 - 6 selections

For each contract package selected, A&I reviewed the package for validity, proper approval and authorization, adequate documentation, and compliance with procurement regulations and best practices. Results from sample contract testing are discussed in the audit findings to follow later in the report.

The status of prior audit findings related to the change order review can be found in **Attachment E** of this report. A&I reached out to the Office of Central Services (OCS) regarding the status of the prior audit findings, however, as of the time of the writing of this report, no response has been received.

Management's Responsibility for Internal Controls

Internal control is defined as “a process, effected by an entity’s board of directors, management, and other personnel, designed to provide reasonable assurance” regarding the achievement of the following objectives relating to operations, reporting, and compliance¹:

- Effectiveness and efficiency of the entity’s operations;
- Reliability, timeliness, and transparency of financial and non-financial reporting; and
- Adherence to laws and regulations to which the entity is subject.

Management is responsible for establishing and maintaining an environment that sets a positive and supportive attitude towards internal control. When the importance of internal controls is communicated to employees, particularly through management’s own actions and beliefs, the process is more likely to function effectively.

A strong internal control environment is essential in minimizing operational risks and improving accountability; this further helps an agency to achieve its mission.

We noted the following strengths in relation to the internal controls we observed during the change order contract review process:

- A detailed proposal was prepared by the contractor describing the needed modifications to include applicable construction costs, additional time and other details.
- The negotiated construction costs appeared to be reasonable (+/- 15%) when compared to similar services and/or materials.
- Change Orders reviewed included the necessary documentation with the minimum required information which includes, but is not limited to: a clear description of the scope of work for this change, cost data by line item for unit price, or by sum; and total cost of the modification, net increase, decrease or that there is no change in the contract price and suitable explanations of the reasons for the change orders.
- Change orders reviewed were adequately authorized by the Chief Administrative Officer and the Deputy Chief Administrative Officer (CAO/DCAO).
- Written procedure, Administrative Procedure 120, was in place to direct the Administrative Review Committee (ARC) contract review process, which includes change orders. The index of Admin. Procedure 120 also includes the Construction Contract Checklist which stipulates the required change order information.

¹ *Internal Control – Integrated Framework* published by the Committee of Sponsoring Organizations of the Treadway Commission, Copyright 2013

We also observed several control weaknesses in the process of the change order contract review processes that require management's attention. The following sections detail the items noted during our review.

FINDING 1: Award of Contract without Competitive Solicitation

A change order was processed on December 9, 2016 for an additional 180 days for the slurry and cracked sealing of existing road-ways contract (Slurry Pavers, Inc., Contract # 902-H (D)) which expired in December 4, 2016. The contract was ultimately extended to June 2018 via change orders, thus allowing a two (2)-year period contract to be awarded to the same contractor for four (4) years without competitive solicitations at an additional cost in excess of \$1,000,000 to the County.

Also, we determined that the agreement with E&R Construction (Contract #910-H (E)/A) indicated that the completion date was September 8, 2017; however, change order #2 was issued on March 15, 2017, or approximately six (6) months prior to the contract expiration date. There appears to have been ample time for the Agency and the Office of Central Services (OCS) to issue a new competitive solicitation prior to the execution of Change Order #2.

Sec. 10A-111. of the County Code - Methods of awarding contracts, stipulate that

(a) Except as otherwise authorized by law, all County contracts shall be awarded by:

- (1) Competitive sealed bidding;
- (2) Competitive sealed proposal;
- (3) Contract negotiation; or
- (4) Small purchase procedures.

(b) No contract or purchase shall be subdivided to avoid the competitive bidding and competitive sealed proposal requirements of this Subtitle.

According to DPW&T Directive 474.02:

“A change order is a written modification of the construction contract, authorizing additions, deletions and adjustments in the contract time or sum within the scope of the original contract, or other revisions after it has been executed by the appropriate authorities. It does not generally include work extending outside the physical limits of the job or work of a different nature from that covered by the contract, or work that **substantially increases** the value of the contract.”

(page 2) “when determining the need for a Change Order, the Director determines that a change is required to incorporate construction not covered by the project plans and specifications.” Also stated under DPW&T Directive item 8 (page 3) the explanation of the reasons for the Change Order includes but should not be limited to: ...

“(f) Request by the County.”

Sec. 10A-137. - Contract Monitoring of the County Code, stipulates that:

“the Purchasing Agent and the Contract Compliance Unit shall have the right to periodically monitor work performed under a contract awarded under this Subtitle to ensure compliance with all applicable provisions of the contract. All contractors and

subcontractors shall grant the Purchasing Agent, the Contract Compliance Unit, and any authorized representative access to the contractor's or subcontractor's work site place of business, and applicable business records. The Purchasing Agent and the Contract Compliance Unit may perform or contract to perform periodic or random compliance audits of contracts awarded under this Subtitle.”

According to the 2002 letter of Delegated Authority (Revised in 2008):

The letter of delegated authority (signed in 2002) and revised (unsigned in 2008), limits the Agency’s procurement authority to those procurements of \$25,000 or less and for those goods and services associated with horizontal construction of roads, highways, bridges, drainage improvements and flood control projects and roadway architectural and engineering services.

The original agreement between the County and Slurry Pavers, Inc. in 2014 provided no conditions for an extension of the contract. No recourse is provided in the contract documents or procurement regulations when an increase or decrease quantities affects contract bid price. Failure of both the Office of Central Services (OCS) and the Department of Public Works and Transportation (DPW&T) to properly monitor the contract such that a change order is utilized in lieu of competitive sealed solicitation.

DPW&T personnel indicated that they relied on the interpretation of the 2002 letter of Delegated Authority (Revised in 2008, but not ratified) memo, which allows them the rights to extend the agreements with contractors.

The practice of making a low bid, sometimes at or below cost with a plan to make it up via change orders is unethical. The reason to do this is to beat other bidders who are fairly bidding on the project, including factoring in their required profit on the job. Extension of the contract beyond the initial time period via a change order, in effect, avoids the competitive bid process.

Failure to obtain new bids may result in the County paying more for services with the existing contractor. The County may not be getting a fair value price for the product or service they are purchasing. There is a risk that taxpayer dollars are being misused.

The Agency may be operating outside the scope of their delegated authority, and contracting with vendors without the proper authority to do so.

RECOMMENDATION:

1a) The practice of using change orders should not be used in lieu of issuing competitive sealed solicitations.

1b) The Agency should solicit new competitive bids for all work within 180 days of contract expiration. The solicitation should be coordinated with the Office of Central Services (OCS). If OCS determines that the Agency may pursue the procurement without its assistance, then a written determination should be executed.

1c) Change orders shall be executed prior to the expiration of contracts. Change orders are not intended to be a means to extend an existing agreement beyond the expiration date when it is determined that the Contractor failed to meet the project intended timeline.

FINDING 2: Failure to Maintain Updated Delegated Authority Documentation

We were unable to locate a signed/ratified copy of the delegated authority (revised in 2008) to the Department of Public Works and Transportation (DPW&T), which limits the Agency's procurement authority.

According to the 2002 letter of Delegated Authority (Revised in 2008):

The letter of delegated authority (signed in 2002) and revised (unsigned in 2008), limits the Agency's (DPW&T) procurement authority to those procurements of \$25,000 or less and for those goods and services associated with horizontal construction of roads, highways, bridges, drainage improvements and flood control projects and roadway architectural and engineering services.

The Agency's interpretation of its delegated authority, which was granted in July 2008, allows them the rights to extend the agreement with Slurry Pavers, Inc.

The Agency may be operating outside the scope of their delegated authority, and contracting with vendors without the proper authority to do so.

RECOMMENDATION:

2a) The Office of Central Services (OCS) should seek to maintain copies of all ratified delegated authority documentation and should monitor agencies to ensure that they are in compliance with authorized delegated authority.

2b) Delegated Authority documentation should be updated and ratified on a regular basis.

FINDING 3: Failure to Obtain Adequate Bonding Coverage

The Department of Public Works and Transportation (DPW&T) did not request or obtain a payment or performance bond (surety bonds) to cover the increased value of the contract to reflect the change order(s). The original documentation was not revised to reflect the increased contract amounts for the first or subsequent change order(s). Also, the Agency failed to attach an updated Construction Contract Checklist to the change order which indicates whether a bond is required for the project, and we determined that the following seven (7) change orders selected for review contained the same bond document as the original (initial) contract award:

1. Slurry Pavers, Inc. 902- H (D)
2. D&F Construction, Contract # 910- H (E)/C
3. F&F Landscaping, Contract # 856-H (C)

4. Sun Ventures, Contract # 855-H (D)
5. Olney Masonry Corp., Contract # 910 – H (E) /E
6. E & R Services, Inc., Contract # 910 – H (E)/A
7. Rustler Corp., Contract # 872-H (F)

According to Article 2.04 of the Standard Contract. Performance and Payment Bonds.
“...Required when the initial Contract Price exceeds \$50,000.

A. The County shall provide to the Contractor for execution copies of the performance and payment bonds. The bonds must be executed and returned to the County as provided by the Contract. The premium for the Bonds shall be paid by the Contractor.

B. Each of the bonds shall be in the full amount of the Contract Price and the bonding companies must be acceptable to the County.

C. The Contractor shall, unless otherwise directed by the County, increase the amount of the bonds from time to time to reflect increases in the Contract Price. For such additions, the Contractor will be reimbursed by the County for the amount of the actual increased bond cost.

D. The Contractor shall deliver fully executed (100%) performance and payment bonds to the County within 10 business days after the contract form is sent to the Contractor. The Contractor shall increase the amount of the bonds as contemplated in C above and deliver evidence thereof to the County within 10 business days after an increase to the Contract Price.

E. Performance and Payment Bonds are to be valid through one (1) year warranty period of the Project.

Administrative Procedure 120 (Administrative Review Committee) index includes the Construction Contract Checklist which stipulates the required bond form information (see **Appendix D** attached).

The Department of Public Works and Transportation (DPW&T) did not request or obtain a payment or performance bond (surety bonds) to cover the increased value of the contract to reflect the increase contract amounts for the first or subsequent change order(s) because the staff at DPW&T failed to follow established contract terms. Additionally, the Office of Central Services (OCS) personnel failed to properly monitor the processing of change orders by an agency with delegated procurement authority, to ensure compliance with County regulations, policies and procedures and good business practices.

Surety bonds provide financial security and construction assurance to project owners by verifying that contractors are capable of performing the work and will pay subcontractors, laborers and material suppliers. Failure to ensure adequate insurance and bonding is in place, is especially important for public projects, and puts the County and taxpayers' dollars at risk.

RECOMMENDATION:

3a) The Office of Central Services (OCS) should maintain a comprehensive list of all contracts and change orders processed across all County Government agencies, including those with delegated procurement authority and ensure compliance with regulations, policies and procedures.

3b) Through the prequalification phase, the Agency and OCS should be responsible for obtaining an updated surety bond that will verify the contractor's ability to perform the contract and fulfill its financial obligations. This in-depth process should include a complete review of financial statements, capacity to perform, organizational structure, management, trade references, credit history, and banking relationships. Before a surety company issues a performance and/or payment bond, it must be certain that the contractor runs a well-managed, profitable enterprise, deals fairly and performs obligations as agreed.

3c) All construction change orders submitted to the County's procurement, spend management and supply chain platform SPEED (which incorporates what was formerly the Administrative Review Committee (ARC) process), should include updated surety bonds with the extended value of the contract(s). This information should be attached to the Construction Checklist as prescribed in the Administrative Procedure 120 (Administrative Review Committee) index.

FINDING 4: Failure to Obtain Approval from the Administrative Review Committee

There is no record that any of the Change Order(s) for these projects which were processed through the Administrative Review Committee (ARC). The Agency did not forward the completed packages to obtain authorized signatures for any of the following seven (7) change orders in accordance with established policies and procedures:

1. Slurry Pavers, Inc. 902- H (D)
2. D&F Construction, Contract # 910- H (E)/C
3. F&F Landscaping, Contract # 856-H (C)
4. Sun Ventures, Contract # 855-H (D)
5. Olney Masonry Corp., Contract # 910 – H (E) /E
6. E & R Services, Inc., Contract # 910 – H (E)/A
7. Rustler Corp., Contract # 872-H (F)

We also determined that change orders are not always reviewed by the Office of Finance Risk Management team.

In the publication on standards for internal controls (GAO/AIMD-00-21.3.1) (11/99) the Government Accountability Office (GAO) states that:

“Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in a paper or electronic form. All documentation and records should be properly managed and maintained.”

According to County's Administrative Procedure 120 (Revised) the Administrative Review Committee (ARC):

- After the change order has been signed by the contractor, it is to be processed through the Director to the Administrative Review Committee for signature by the Deputy Chief Administrative Officer.
- “....the package should include the Construction Contract Checklist (addendum).”

There is no record that any of the Change Order(s) for this project were processed through the Administrative Review Committee (ARC) because of the failure of Agency staff to follow established policy and procedures, and failure of the Office of Central Services (OCS) to properly monitor the processing of change orders by an agency with delegated procurement authority, to ensure compliance with County regulations, policies and procedures and good business practices.

Failure to have appropriate review and approvals, coupled with inadequate documentation, perpetuates an increased likelihood of errors, inaccurate records and information, and reduces the reliability of the transaction files. There is also increased difficulty for corrective action once errors are detected. Furthermore, there is a risk of significant financial loss to the County and taxpayers in the event that an unforeseen catastrophic event occurs, and the contractor does not have adequate liability insurance/bonding coverage in place to account for changes/increases stemming from change orders.

RECOMMENDATION:

4a) **We recommend** the Office of Central Services (OCS) maintain a comprehensive list of all contracts and change orders processed across all County Government agencies, including those with delegated procurement authority and ensure compliance with regulations, policies and procedures.

4b) **We recommend** the Agency ensure that all transactions are sufficiently documented, maintained, managed and readily available for review and examination.

FINDING 5: Overpayment of Retainage Fee

Our review of purchase orders and payments to Slurry Pavers, Inc. in the County’s financial system (SAP) indicated that the contractor was paid \$20,200 more than the value of the contract # 902 – H (D), due to an overpayment of the retainage fees. No refund or project offset was noted in the SAP accounting module to support/reconcile this expenditure error. A retainage fee of 1% of the total contract value of \$79,872.36 was due and payments were released over time in increments to the contractor. However, based on a review of the total payments made in SAP, an additional partial release of retainage payment of \$10,859.21 was made, which brought the total retainage fees paid to the contractor to \$100,072.53. As of May 2018 this amount had not been reimbursed to the County according to an interview with Department of Public Works and Transportation (DPW&T) and Office of Finance personnel.

The initial contract that was awarded to Slurry Pavers, Inc. was approximately \$3.6 million in 2014. However, after multiple subsequent modified purchase orders and change orders for the next few years, the value of the contract was increased to

approximately \$8 million dollars, or \$4.3 million dollars over the initial contract award. The total contract value including modifications and authorized change orders are as follows:

Type	Date	Amount (\$)
Initial Contract Value	December 2014	3,645,750.00
Modified Purchase Order	November 2015	1,500,000.00
Modified Purchase Order	September 2016	1,675,906.63
Change Order #1	June 2017	1,000,000.00
Modified Purchase Order	August 2017	165,580.07
Total Contract Value		7,987,236.70
Retainage Fee (1%) Due		79,872.36
Actual Retainage Fee Paid (SAP data)		100,072.53
Total Amount Overpaid		\$20,200.17

According to the original agreement Paragraph D Article 8: Payments (page 70), Contract 902-H (D):

“A retainage equal to 1% of the total value of the contract shall be withheld by the County.”

Paragraph F, states that: “all prior partial estimates and payments shall be subject to correction at the time of the acceptance and final payments and if the Contractor is overpaid, the amount of such overpayment shall be set forth in the Final Payment forms and the Contractor hereby agrees to reimburse the County for such overpayments within six (6) months of receipt of such advice and his surety will not be granted release from obligations under the terms of the Contract until reimbursement has been made in full.”

No internal Agency procedures were available to address the process for calculating and documenting the retainage fees for work completed. The retainage amount must reflect the full contract value including modifications and change orders. All payment of retainage amounts must be reviewed and tracked to ensure that any overpayments are reimbursed within six (6) months, which does not appear to have been done.

It appears that the correct amount was not retained over the period of the contract and subsequent modifications, resulting in an overpayment of over \$20,000 to the vendor.

RECOMMENDATION:

5a) The Office of Central Services (OCS), Department of Public Works and Transportation (DPW&T) and the Office of Finance should develop procedures to address the process for calculating and documenting the retainage fees for work completed.

5b) The Office of Central Services (OCS), DPW&T and the Office of Finance should review internal procedures to ensure that retainage amounts are properly calculated and reflects the full contract values. All payments for retainage should be verified and monitored.

5c) The County should seek to recover overpayment amounts from the vendor in the form of either a refund or application of overpayment amounts to future projects.

FINDING 6: Failure to Maintain Minority Business Enterprise Subcontracting Goals Report

The Office of Central Services (OCS) and the Agency were unable to provide the auditors with copies of the Monthly Minority Business Enterprise (MBE) Utilization Report to verify compliance with the MBE Subcontracting participation rate for the Slurry Pavers, Inc. (Contract # 902-H (D)).

Additionally, the Department of Public Works and Transportation (DPW&T) failed to require compliance with the MBE County regulations that subcontracting goals be adhered to, which required a 40% MBE component, unless a waiver is granted by the Purchasing Agent. No waiver was requested from the DPW&T or granted by the Office of Central Services (OCS). The competitive solicitation required a 40% MBE compliance. However, only one (1) response was received from Slurry Pavers, Inc. The DPW&T accepted this proposal at a lower rate of participation than required (28.5%) without requesting or obtaining a waiver from OCS as required by the regulations (Slurry).

Based on the initial contracting documents and the value of the initial award and subsequent change orders, the total contract value was calculated at over \$7.9 million, thus the subcontracting goal at the accepted 28.5% participation rate equals \$2.3 million. The Agency and the Office of Central Services (OCS) accepted the proposal, and awarded the contract, under a lesser participation rate, for a total subcontracting value of \$1,040,380. The vendor indicated in the 2014 compliance package that they would attain a Minority Business Enterprise (MBE) Subcontracting participation rate of 28.5%.

In 2014, the County regulations only required Minority Based Participation and monthly progress reporting related to subcontractor utilization. This project required 40% MBE subcontracting as specified in the Standard Contract (page 3).

County Code Sec. 10A-138. Purchasing – Reports states that:

The Purchasing Agent will maintain records and statistics on contract bids and awards and transmit annually by July 1, a report to the County Executive and the County Council that summarizes progress and efforts made to achieve the goals stated in Divisions 6 and 7 of this Subtitle. The report shall identify problems encountered or anticipated in meeting those goals, and shall, at a minimum, contain the number, dollar amount, and method of award of all contracts and subcontracts awarded minority business enterprises, County-based business, County-based minority business enterprise, County-based small business, and County-located business. The report shall include the number and nature of the waivers for contracts over Five Hundred Thousand Dollars (\$500,000) approved by the Chief Administrative Officer pursuant to 10A-159.01.

Sec. 10A-161. - County-based business participation requirements. (a) For any procurement that is greater than Five Hundred Thousand Dollars (\$500,000) in total value for which a County agency or the County government secures competitive bids or proposals, including, but not limited to, competitive bids secured pursuant to Section 10A-112 or competitive proposals pursuant to Section 10A-113, the Purchasing Agent shall require the following: (1) At least **forty percent (40%)** certified County-based small business participation; provided, that the costs of materials, goods, and supplies shall not be counted towards the forty percent (40%) participation requirement, unless such materials, goods, and supplies are purchased from County-based small businesses; and (2) A bid or proposal responding to a solicitation shall be deemed nonresponsive and shall be rejected by the Purchasing Agent if it fails to meet the forty percent (40%) minimum certified County-based small business participation requirement in Paragraph (1) of this Subsection, unless the participation requirement is **waived and adjusted pursuant** to Subsection (b) of this Section.

(b) If the Purchasing Agent determines that there are insufficient responsible County-based small businesses to completely fulfill the requirement of Paragraph (1) of Subsection (a) for a particular procurement or if the requirement would result in the loss of federal or state funds or grants, the Purchasing Agent, upon approval by Council resolution and concurrence of the County Executive, may waive the requirement and adjust or modify the minimum participation percentage requirement.....(c) Failure to apply the applicable provisions of this Subdivision to a procurement award, subject to the waivers and adjustments authorized by this Division, shall render the procurement award and/or contract or **agreement void**.

We determined that there were multiple contributing factors that led to the failure of OCS and/or the Agency to provide the auditors with copies of the Monthly MBE Utilization Report to verify compliance with the MBE Subcontracting participation rate for the Slurry Pavers, Inc. contract. Based on our review there was a lack of continuity and exchange of up-to-date information between the Office of Central Services (OCS) and the user Agency to ensure compliance with MBE and County Based Business (CBB) goals. OCS, Supplier Development and Diversity Division (SDDD) is responsible for monitoring compliance with MBE and County based participation, however, no adequate system was in place at the time to ensure vendor compliance, and we could not confirm payments.

There was a failure of the Agency to comply with County laws and or contracting agreements. There was a failure to verify that subcontractors are receiving a fair share based on modified contract values or change orders results in less profits for a disparaged class of businesses. Finally, there was a failure to review the participation goal and results may adversely impact the payment to subcontractors. Additionally, auditors were unable to verify whether payments were in accordance with the agreement and could not determine the amount actually paid to the subcontractors.

RECOMMENDATION:

6a) We recommend that the Office of Central Services (OCS) and the Department of Public Works and Transportation (DPW&T) review payments to subcontractors to determine if they are in compliance with the Prime contractor agreement to meet the subcontractor participation goals.

6b) We recommend that OCS should consider reviewing the effects of change orders on subcontractor payments to ensure the agreed upon participation results are obtained. In most cases, subcontractors are unaware that the prime has received additional funds thru change order and contract modifications.

6c) We recommend that OCS ensure that the new system and protocols for monitoring payments to subcontractors, which was still under development at the time of this review, is up and running as soon as possible. Alternative monitoring mechanisms should be developed until the system becomes fully operational and, in the event that there is system failure.

6d) We recommend that OCS monitor and review all contracts that are procured by agencies with delegated procurement authority to ensure compliance with applicable county codes and regulations.

FINDING 7: Lack of Adequate Documentation

The Department of Public Works and Transportation (DPW&T) did not maintain the linear footage data on the master resurfacing report (Road Resurfacing and Related Improvements in Councilmanic Districts), which is the tool used for checking to ensure that work is completed within the parameters of the contract terms and conditions. The Change Orders, which were a multi-award contract made to five (5) separate vendors, increased the contract value by one million dollars (\$1,000,000), and the work was expanded to include 15 additional streets. The report was missing key data related to project completion dates, linear footage completed, and results were not reconciled with the planned work requests included in the contract.

According to the Government Accountability Office (GAO) standards for internal controls (GAO-14-704G), internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation may appear in management directive, administrative policies, or operating manuals, in either paper or electronic form, and should be properly managed and maintained.

DPW&T does not maintain a complete road resurfacing report as there are no internal procedures for maintenance of the road resurfacing tracking report. Streets are commonly added to the contract to address specific concerns from County Councilmembers. These requests are not currently documented in the master report as they are handled out of the Office of the Director, DPW&T. Furthermore, there is a lack of oversight and monitoring of this report to ensure that change orders are not being misused for project budgeting purposes.

Missing data on the Master Resurfacing Report does not allow the Agency to reconcile the project cost in SAP with Agency data.

A&I was unable to determine if the total value of the contract change order was reasonable, and to audit the change order to ensure accuracy and conformance with the contract price schedule due to the missing data.

RECOMMENDATION:

7a) The Department of Public Works and Transportation (DPW&T) should develop internal procedures and track the contractor performance on a monthly basis. The Road Resurfacing and Related Improvements in Councilmanic Districts is a tracking report that can be used to monitor the Contractor's workload and ensure progress toward completion of the assigned area within the timeframe of the Contract.

7b) All County Council generated requests for roadway repairs should be documented on the master resurfacing report. This report is a good tool for checking to ensure that work is completed within the parameters of the contract terms and conditions.

FINDING 8: Failure to Disclose Known Bid Quantities During Contract Solicitation

The Department of Public Works and Transportation (DPW&T) executed an initial contract, two (2) change orders and one (1) contract modification with E&R Services, Inc. from 2015-2018, totaling approximately \$5.5 million, or \$2 million more than the original contract value. Through inquiry of DPW&T Management, we determined that the additional locations that led to the increase in the contract via Change Order #2 were known by the Agency prior to the execution of the original agreement, and should have been included in the original contract solicitation. At the time of the change order review for legal sufficiency, the Office of Law notified DPW&T that a remedy would have been to extend the scope of work at the time of the solicitation instead of issuing a change order.

According to DPW&T Directive 474.02 (page 2) when determining the need for a Change Order, the Director determines that a change is required to incorporate construction not covered by the project plans and specifications. Also stated under DPW&T Directive item 8 (page 3) the explanation of the reasons for the Change Order includes but should not be limited to:.....(f) Request by the County.

The current DPW&T Directive does not address the timing of executing a change order in close time proximity to the execution of the original/initial agreement; nor does the purchasing regulations (Section 10A- Prince George's County Code) address this condition.

DPW&T did not provide valued and useful information to all bidders related to anticipated quantities of work to be performed. As such, bid quantities that do not reflect the proper units of probable work may result in the County not receiving the best value.

The quantities reflected in the bid documents should reflect the work to be executed as reasonable as possible. Consistently understating the quantity of work may result in higher prices as well as adversely impacting bidders seeking to do business with the County.

RECOMMENDATION:

8a) We recommend that the practice of using change orders should not be used in lieu of issuing competitive sealed solicitations.

8b) We recommend that DPW&T ensure that bid quantities accurately reflect workload expectations.

FINDING 9: Failure to Comply with Contract Terms

The Department of Public Works and Transportation (DPW&T) executed an initial contract, two (2) change orders and one (1) contract modification with E&R Services, Inc. from 2015-2018, totaling approximately \$5.5 million, or \$2 million more than the original contract value. Through inquiry of DPW&T Management, we determined that:

- a) the value of the Change Orders exceed the 25% limitation (or \$852,802) stipulated in the scope of work for the contract as acceptable by approximately \$1.189 million. Also provided in (1.16) of the standard contract, “quantities for each contract may be increased or decreased in order to adjust the Contract award amount.”

Description	Date	Amount \$
Original/initial agreement	April 17, 2015	3,411,250.00
Change Order #1	May 24, 2016	500,000.00
Change Order #2	March 15, 2017	1,000,000.00
Contract Modification	September 4, 2018	542,683.41
TOTAL Contract Value		5,453,933.41
Max. 25% Limitation of Contract Price Allowed		\$852,802
Actual Increase of Contract Price Above Amount Allowed		\$1,189,881.41

DPW&T executed a contract with D&F Construction, Inc for road resurfacing. The original agreement on February 13, 2017 totaling \$1,772,450 and a change order for an additional \$1,000,000 was approved on March 20, 2017. Through inquiry of DPW&T Management, we determined that:

- b) the value of the Change Orders exceed the 25% limitation (or \$443,112) stipulated in the scope of work for the contract as acceptable by \$556,888.

Description	Date	Amount
Original Agreement	January 14, 2016	\$1,772,450
Change Order #1	March 20, 2017	1,000,000
Total Contract Value		2,772,450

Description	Date	Amount
Max. 25% Limitation of Contract Price Allowed		\$443,112
Actual Increase of Contract Price Above Amount Allowed		556,888

The PGC DPW&T Standard Contract (Part I) Instructions to Bidders (1.18) Increase or Decrease Quantities states that the County reserves the right to delete, increase or decrease bid quantities without renegotiations of the Contract bid price; however the Scope of Work on this Contract may be increased only to the extent that the original Contract price amount is not exceeded by twenty-five percent (25%).

Also provided in (1.16) of the standard contract, “quantities for each contract may be increased or decreased in order to adjust the Contract award amount.”

According to DPW&T Directive 474.02 (page 2) when determining the need for a Change Order, the Director determines that a change is required to incorporate construction not covered by the project plans and specifications. Also stated under DPW&T Directive item 8 (page 3) the explanation of the reasons for the Change Order includes but should not be limited to: ...

(f) Request by the County.

Item 3 under the PGC DPW&T (Part II) General Terms and Conditions (3.03) states that the County shall not be responsible for any conclusions or interpretations made by the Contractor on the basis of the information made available by the County

No recourse is provided in the contract documents or procurement regulations when an increase or decrease of quantities affects Contract bid price; however the Scope of Work on this Contract may be increased only to the extent that the original Contract price amount is not exceeded by twenty-five (25%).

The rationale for the change order as stated on the ARC transmittal is to reflect actual quantities used and to reflect field conditions for additional resurfacing work for asphalt resurfacing, concrete curbs and gutters, sidewalks and related improvements for 17 new streets not included in the original contract. Management indicated that units are consistently updated based on Council requests and field conditions.

The current DPW&T Directive does not address the timing of executing a change order in close time proximity to the execution of the original/initial agreement; nor does the purchasing regulations (Section 10A- Prince George’s County Code) address this condition.

DPW&T did not provide valued and useful information to all bidders related to anticipated quantities of work to be performed. As such, bid quantities that do not reflect the proper units of probable work may result in the County not receiving the best value.

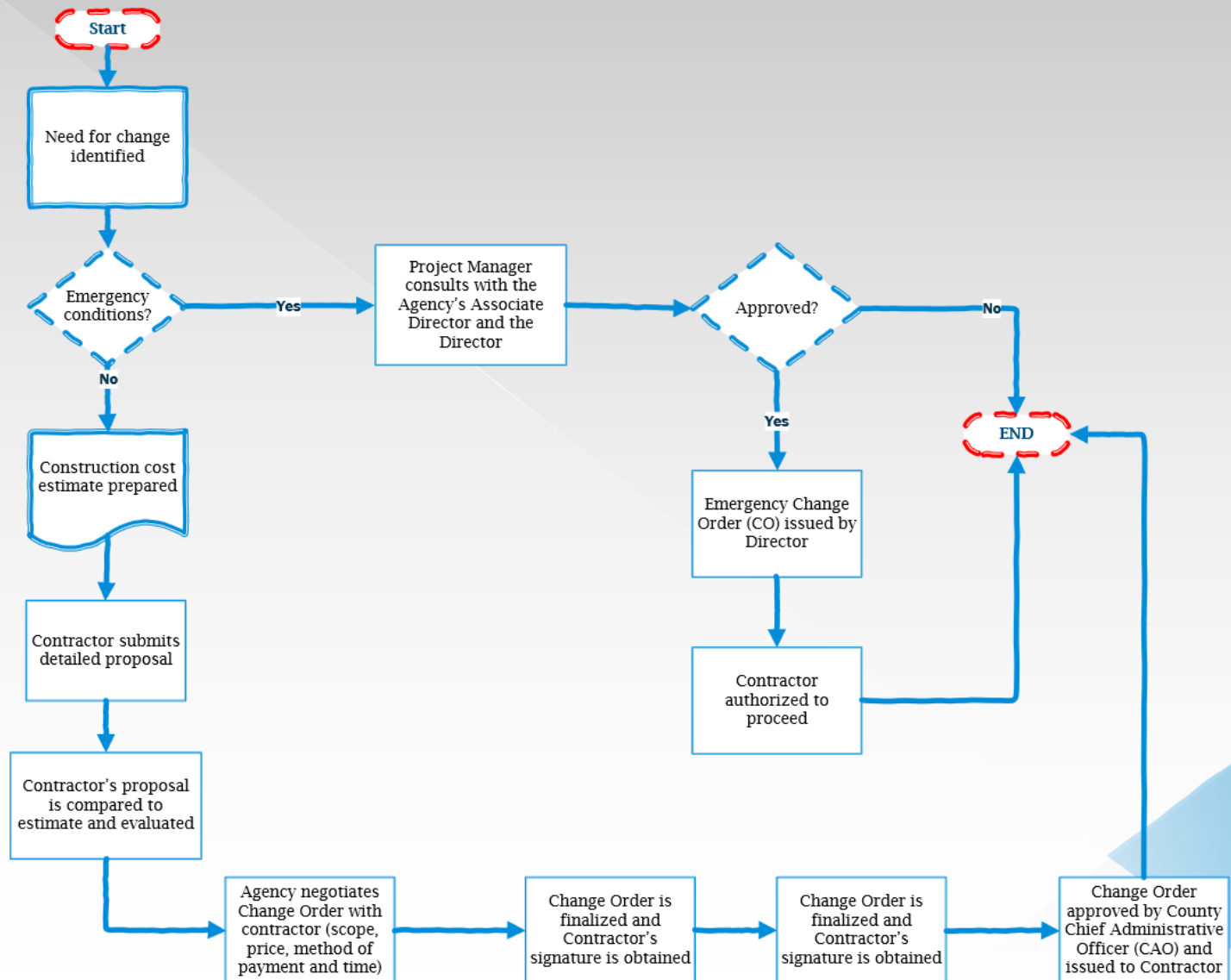
The quantities reflected in the bid documents should reflect the work to be executed as reasonable as possible. Consistently understating the quantity of work may result in higher prices as well as adversely impacts bidders seeking to do business with the County.

RECOMMENDATION:

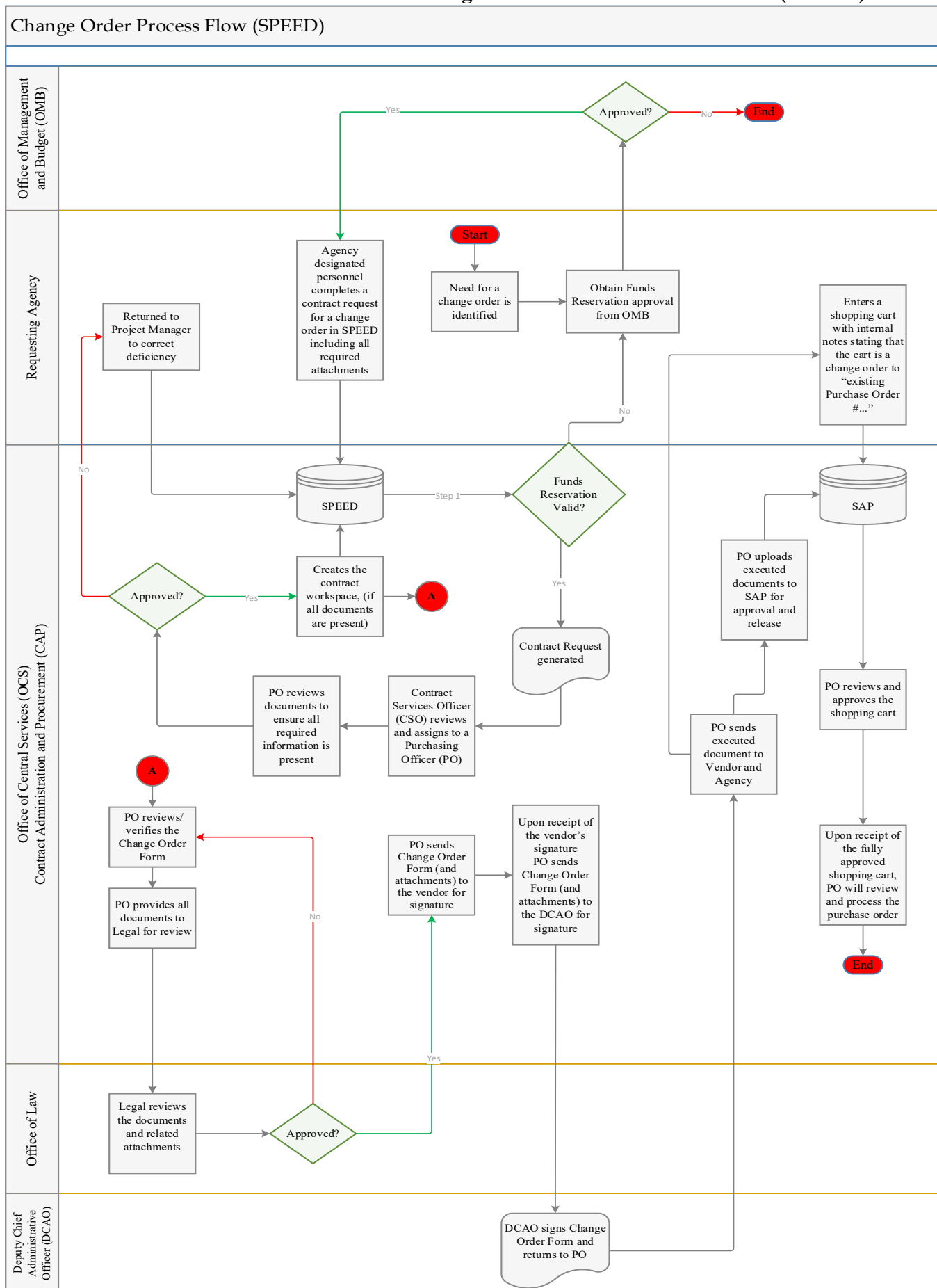
9a) The Office of Central Services (OCS) and the Department of Public Works and Transportation (DPW&T) should provide a remedy for their procedures and protocols when the execution of any change order(s) result in increases in contract amounts that exceed the percentages stipulated in the contractual agreements. If a change order is deemed necessary, written justification must be provided and authorization by the Deputy Chief Administrative Officer (DCAO) when the value of the change order exceeds 25% of the initial contract value.

Appendix A
Construction Change Order Overview Process Flow (DPW&T)

Department of Public Works and Transportation (DPW&T)
Change Order Process Flow



Change Order Overview Process Flow (SPEED)



Appendix C-1 Sample Change Order Request Form

WORK ORDER MODIFICATION PRINCE GEORGE'S COUNTY, MARYLAND DEPARTMENT xx						
Contract Name:			Contract No.		Date of Contract:	
Work Order No.			Date of Work Order:			
Work Order Modification No.			Date of Work Order Modification:			
Name of Project: Sample Work Order Modification						
Between PRINCE GEORGE'S COUNTY, MARYLAND, xx McCormick Drive, Suite xx, Largo, Maryland 20774						
and Contractor's Name and Address						
FOR: Modification of Work Order/Adjustment of Quantities to reflect actual quantities used and to reflect field conditions						
THE CONTRACT IS AMENDED AS FOLLOWS:						
The Contractor shall furnish all labor, equipment, materials, supervision and perform the following work: "Additions or Deductions of Work Items or Quantities in the original Work Order"						
The following Items are revised as noted:						

Inc, Dec or New	Item No.	Item Description/Category	Unit	Unit Price	Work Order Proposal Quantity	Authorized Quantity To Date	This Modification in Quantity to the Work Order	Modification in Cost to This Work Order	Revised Work Order Quantity	Revised Work Order Cost
INC.								\$ -	0.00	\$ -
NEW								\$ -	0.00	\$ -
NEW								\$ 30,144.45	0.00	\$ -
Total Amount of this Work Order Modification								\$ 30,144.45		

The Contractor shall perform all work in conjunction with the Contractor's original proposal dated xx, Work Order No.xx and Work Order Modification No. 1 in the amount of \$xx

The Work Order time for performance is hereby adjusted by thirty (30) calendar days as a result of this Modification.

Contract Cost Summary		Contract Time Summary	
Original Work Order Proposal Price:	\$ 178,520.12	Notice to Proceed Date	09/20/20
Amount of Work Order Modification No. 1	\$ 30,144.45	Construction Start Date	09/26/20
		Number of Calendar Days in Work Order	60
		Original Construction Completion Date	11/25/20
		Number of Calendar Days Added by Work Order Modification 1	30
New Total Work Order Amount	\$ 208,664.57	Revised Construction Completion Date	12/25/20

Appendix C-2 Sample Change Order Request Form Continued

SPECIAL TERMS AND CONDITIONS

- A. The Contractor shall coordinate all work with and shall contact _____, Project Manager, at 301-883-3836, twenty four (24) hours prior to starting any work authorized by this Work Order Modification.
- B. The terms and conditions of this Work Order Modification constitute a full accord and satisfaction between the County and the Contractor for all costs and time of performance related to the actions described or referenced herein and/or in the Contractor's proposal for all new items of work, which are attached hereto and incorporated by reference as Attachment A, B, and C. This Work Order Modification resolved all claims for delays, disruptions, escalation and extended cost arising out of or related to cost or time, whether known or unknown, asserted or unasserted.

Attachment A: Proposal for Track Loader and Gradall/Grader
Attachment B: Proposal for Magnolia Plumbing (Subcontractor)
Attachment C: Proposal for Melka Marine (Subcontractor)

All the work proposed herewith shall be done pursuant to the terms and conditions of the existing Contract between the County and the Contractor except as modified herein and the Contract remains in full force and effect.

NOTE: Sign and return all five (5) originals.

CONTRACTOR

PRINCE GEORGE'S COUNTY, MARYLAND

Name
Title

Floyd E. Holt Deputy Chief Administrative Officer,
for Government Infrastructure, Technology and Environment

Date

Date

Witness

Witness

Reviewed and Approval Recommended
Name, Director
Department xx

Reviewed for Legal Sufficiency

Office of Law

Appendix D

Construction Contract Checklist (Admin Proc. 120)

Construction Contract Checklist

Contractor name:
 Contract/bid number:

Agency Name:
 Prepared by and date:

Yes	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	One copy of front end documents (bid package)
<input type="checkbox"/>	<input type="checkbox"/>	Contract/bid number on Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Bond number on Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Letter contract - attached
<input type="checkbox"/>	<input type="checkbox"/>	Certifications - attached
<input type="checkbox"/>	<input type="checkbox"/>	MBE
<input type="checkbox"/>	<input type="checkbox"/>	Bidder qualifications
<input type="checkbox"/>	<input type="checkbox"/>	Federal certification
<input type="checkbox"/>	<input type="checkbox"/>	Other _____
<input type="checkbox"/>	<input type="checkbox"/>	Power of Attorney
<input type="checkbox"/>	<input type="checkbox"/>	Must be original document (e.g., raised corp. seal)
<input type="checkbox"/>	<input type="checkbox"/>	Reference to bond number
<input type="checkbox"/>	<input type="checkbox"/>	Attorney-in-Fact name listed same as bond
<input type="checkbox"/>	<input type="checkbox"/>	Signature authority amount equals or greater than bond
<input type="checkbox"/>	<input type="checkbox"/>	Execution date subsequent to bond date
<input type="checkbox"/>	<input type="checkbox"/>	Corporate seal certifies current date
<input type="checkbox"/>	<input type="checkbox"/>	Corporate Acknowledgement
<input type="checkbox"/>	<input type="checkbox"/>	Reference to bond number
<input type="checkbox"/>	<input type="checkbox"/>	Reference to contract number
<input type="checkbox"/>	<input type="checkbox"/>	Complies with standard formatting requirements
<input type="checkbox"/>	<input type="checkbox"/>	Notary's commission authority is current
<input type="checkbox"/>	<input type="checkbox"/>	Insurance Certificate(s)
<input type="checkbox"/>	<input type="checkbox"/>	Consistent with County's minimum requirements
<input type="checkbox"/>	<input type="checkbox"/>	Period covers term of agreement
<input type="checkbox"/>	<input type="checkbox"/>	Project and contract number are identified
<input type="checkbox"/>	<input type="checkbox"/>	Requirement for PGC notification prior to termination

Yes	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	Bond Form
<input type="checkbox"/>	<input type="checkbox"/>	Bond number on top of form
<input type="checkbox"/>	<input type="checkbox"/>	Name and address of contractor
<input type="checkbox"/>	<input type="checkbox"/>	General partnership
<input type="checkbox"/>	<input type="checkbox"/>	Use name of entity
<input type="checkbox"/>	<input type="checkbox"/>	General partnership
<input type="checkbox"/>	<input type="checkbox"/>	Limited partnership
<input type="checkbox"/>	<input type="checkbox"/>	Sole proprietorship
<input type="checkbox"/>	<input type="checkbox"/>	Name/address/state of incorporation of Surety
<input type="checkbox"/>	<input type="checkbox"/>	Monetary amount of bond written out (words + \$)
<input type="checkbox"/>	<input type="checkbox"/>	Name and location of project
<input type="checkbox"/>	<input type="checkbox"/>	Reference to contract/bid number
<input type="checkbox"/>	<input type="checkbox"/>	Leave execution date blank
<input type="checkbox"/>	<input type="checkbox"/>	Date of bond
<input type="checkbox"/>	<input type="checkbox"/>	Signature and typed name of Principal with seal
<input type="checkbox"/>	<input type="checkbox"/>	Witness to Principal's signature
<input type="checkbox"/>	<input type="checkbox"/>	Name of Surety Company and seal
<input type="checkbox"/>	<input type="checkbox"/>	Signature and typed name of Attorney-in-Fact **
<input type="checkbox"/>	<input type="checkbox"/>	Witness to Attorney-in-Fact's signature
<input type="checkbox"/>	<input type="checkbox"/>	Name/address/phone of Surety's local branch
<input type="checkbox"/>	<input type="checkbox"/>	Signature and typed name of Resident Agent **
<input type="checkbox"/>	<input type="checkbox"/>	Registration number of Resident Agent
<input type="checkbox"/>	<input type="checkbox"/>	Name/address/phone of Resident Agent
<input type="checkbox"/>	<input type="checkbox"/>	Signature of Department Head/OCS Designee

** Resident Agent must be different person from Attorney-in-Fact executing bond.

Appendix E
Prior Audit Findings

***Audit Follow Up: No response to date from OCS**

<u>Audits of Contract and Procurement</u>		
<i>Audit Finding</i>	<i>Audit Recommendation</i>	<i>Audit Response</i>
Per discussion with OCS Asso. Director, the responsibility of invoice and payment monitoring has been left to the using Agency/department. After the term contract award notice has been issued, OCS is no longer involved unless there are problems with the actual vendor. In addition, there are no clear procedures on who is responsible for verifying that vendors are billing the County in accordance with the approved contracts. There is the potential for abuse regarding County payments due to the lack of adequate verification and monitoring of the invoices. If this situation persists, it will negate or compromise the formal pricing agreements and the efforts put forth in the procurement process. Although CAP staff is not primarily responsible for monitoring payments to vendors, we feel that their input would add an additional layer of internal control governing the payment process.	(2012): Purchasing Agent develop written procedures and procedures related to the monitoring of vendor billing to the County and implement these policies and procedures as soon as practicable.	The Purchasing Agent will develop written policies and procedures for use by Agency contract administrators to ensure the accuracy in the review of vendor invoices and verify the billing is consistent with the pricing, terms and conditions of the contract.
	(2012): CAP conduct semi-annual audits of vendor invoices, to ensure that the vendor billings are consistent with the terms and conditions of the contract.	CAP will request and review invoices periodically to ensure that vendor billings are consistent with the terms of the contract.

Appendix E
Prior Audit Findings

***Audit Follow Up: No response to date from OCS**

<i>Audit Finding</i>	<i>Audit Recommendation</i>	<i>Audit Response</i>
In almost every case, contract modifications increased the total amount of the contract. We also encountered contracts with multiple modifications for the same contract. Such a high percentage of contract modifications indicate the importance of sound written procedures surrounding the process of contract modifications.	(2012): Department of Public Works and Transportation (DPW&T) create Standard Operating Procedures for their procurement process as it states in its official Delegation of Authority document.	OCS will work with DPW&T to ensure that they submit their Standard Operating Procedures to the Purchasing Agent for review and approval.
OCS, ARC, DER and DPW&T maintain separate lists of their contracts. Since OCS does not track ALL procurement activity it leaves an opportunity for contracts to avoid a procedure in the procurement process, such as reviews and approval by the appropriate Agencies. In addition, there is a lower level of transparency and difficulty assessing important information. With no overall review of contracts it is difficult to determine the valuation of the County's contractual obligations at any given time.	(2012): OCS maintain oversight over delegated authority procurement activity and have increased interaction with these agencies.	OCS will continue to maintain oversight over the Department of the Environmental Resources (DoE) and the DPW&T, the two agencies with delegated procurement authority. Currently, OCS participates in the agencies' monthly Contract Review Committee. OCS will increase interaction with each Agency.
Without written procedures regarding contract modifications there are no stated guidelines that govern this activity. As such, it appears that contract modifications may be done without a required set of steps taken. Lack of control in this area presents an opportunity for a potential vendor to low bid a solicitation in order to win a county contract and to subsequently request a modification to increase the contract price.	(2007): Purchasing Agent establish written procedures regarding contract modifications. These procedures should be added to the Procurement Regulations and Law and distributed to all appropriate procurement personnel.	We agree that there are no written procedures regarding the execution of contract modifications. The updated regulations and County code will include provisions governing contract modifications.

Agency Response to Findings



Angela D. Alsobrooks
County Executive

PRINCE GEORGE'S COUNTY GOVERNMENT

Department of Public Works and Transportation
Office of the Director



Michael D. Johnson, P.E.
Acting Director

MEMORANDUM

DATE: July 11, 2022
TO: Turkessa Green, County Auditor
Office of Audits and Investigations, County Council
THRU: Oluseyi Olugbenle, Deputy Director
Department of Public Works and Transportation
THRU: Kate A. Mazzara, Associate Director
Office of Engineering & Project Management
Department of Public Works and Transportation
FROM: Michael D. Johnson, P.E., Acting Director *MT*
Department of Public Works and Transportation
SUBJECT: Change Order Audit Report

The Department of Public Works and Transportation (DPW&T) has reviewed the Audit Report for the application of Change Orders. Please accept this document as our official response and acknowledgement of the Audit Report. We appreciate the time and effort the Office of Audits and Investigations provided during the audit process and see this as a welcome resource for improving our processes. Below is a summary of our responses and comments for each finding and recommendation in your report, relative to our Agency.

- **Award of Contract without Competitive Solicitation**

Response: Management concurs.

- **Failure to Maintain Updated Delegated Authority Documentation**

Response: Management concurs.

Agency Comments: The Agency intends to revisit the parameters of the existing delegated authority parameters and shall work with the Office of Central Services to update the scope and privileges under such authority.

- **Failure to Obtain Adequate Bonding Coverage**

Response: Management concurs.

Agency Comments: The Agency shall require additional bonding where it is deemed necessary when the change order reflects a substantial increase in cost. The Agency shall develop protocol and guidance for such instances.

(301) 883-5600

9400 Peppercorn Place, Suite 300, Largo, Maryland 20774
FAX (301) 883 -5709

Maryland Relay 711

Ms. Turkessa Green

July 11, 2022

Page 2

- **Failure to Obtain Approval from the Administrative Review Committee**

Response: Management concurs.

Agency Comments: The Agency has adapted protocols to ensure that relative change order supporting documentation is retained by the Office of Engineering and Project Management. Copies shall also be made available to the Office of Administrative Services for review and inclusion in the County SAP record as an attachment. The Agency contends that it did seek appropriate ARC approval; however, Audit was unable to substantiate with written records.

- **Overpayment of Retainage Fee**

Response: Management concurs.

Agency Comments: This issue has been resolved with the Office of Finance and better internal tracking processes have been established

- **Lack of Adequate Documentation**

Response: Management concurs.

- **Failure to Disclose Known Bid Quantities During Contract Solicitation**

Response: Management concurs.

Agency Comments: The Agency shall ensure that bid quantities accurately reflects the volume of work that is reasonably expected to be performed based on historical trends, the projected budget and County needs.

- **Failure to Comply with Contract Terms**

Response: Management *does not* concur.

Agency Comments: The Agency has revised Invitation for Bid (IDIQ: Section 1.26 Increase and Decrease of Contract Quantities) template, with concurrence of the Office of Law, to more clearly articulate the intent of the 25% threshold limitation for contract negotiations. The intent of this section is that the Agency may increase the value of the contract **without negotiation**, as long as the change does not exceed more than 25%. This provision is not applicable post contract award to change orders.

Additionally, the Agency processed change order in accordance with ARC procedures; however, Audit could not verify that the ARC documentation was completed. As a result, Agency procedures and protocols are well established to ensure a proper level of authorization is attained prior to approval of the change order and submitted through the SPEED system for authorization and record keeping.

cc: Oluseyi Olugbenle, Deputy Director, DPW&T
Eboni Gatewood-Crenshaw, Associate Director, Office of Administrative Services (OAS), DPW&T
Canjor Reed, Chief, Financial Management Division, (FMD), OAS, DPW&T
Dwight Joseph, Chief, Construction and Contracts Division, OE&PM, DPW&T