

Final  
Advisory  
Memorandum

# Memorandum of Understanding Regarding the School Bus Safety Camera Program

OIG Publication # 20-002

July 23, 2019

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Montgomery County, Maryland  
Office of the Inspector General

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OFFICE OF THE INSPECTOR GENERAL

**FINAL ADVISORY MEMORANDUM**

June 28, 2019

**TO:** Andrew W. Kleine  
Chief Administrative Officer

**FROM:** Edward L. Blansitt III  
Inspector General

**SUBJECT:** Memorandum of Understanding Regarding the School Bus Safety  
Camera Program  
OIG Publication #20-002

**I. Introduction and Summary of Findings**

In August of 2018, the OIG learned a local news reporter asked the Montgomery County Government (MCG) about possible contractual connections between MCG and Force Multiplier Solutions, Inc. (FMS)<sup>1</sup>. These inquiries were based on reports about the conviction of the FMS Chief Executive Officer (CEO) of federal crimes involving fraud and bribery of public officials in Texas regarding the operation of a school bus safety camera program. This company and its successor have operated the same program in Montgomery County (County).<sup>2</sup>

Although the contract is with the Montgomery County Public School System (MCPS), Montgomery County Police Department (MCPD) employees appear to have extensively participated in contract negotiations and then signed a Memorandum of Understanding (MOU) between MCPS and the County (through the County Police Department). This MOU appears to obligate the County to certain requirements as described in the MCPS contract.

There is no information suggesting that any County or MCPS employee violated a rule, law, or procedure, had any inappropriate relationship with the vendor or that the County, MCPD, or MCPS is connected to any of the events in Texas. We support the MCPD and MCPS expressed goals of increasing public and student safety but remain concerned about the use of an MOU and the effectiveness of County procurement and administrative process controls. We also question whether an appropriate business case<sup>3</sup> was presented supporting County involvement

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<sup>1</sup> For consistency "FMS" will be used throughout this document to refer to Force Multiplier Solutions.

<sup>2</sup> This program is referred to in Montgomery County as the "School Bus Safety Camera Program."

<sup>3</sup> In this context, a business case is the identification and analysis of a problem and the development of an effective, reasonable, and feasible plan to reach the desired outcome. Herman, B. & Siegelau, J. M. (2009). *Is this really worth*

in this MOU/contract and if a proper re-assessment was made once serious issues involving the selected vendor came to be known.

We recommend that financial transactions and obligations related to agreements be subjected to an objective business case analysis to protect the interests of the County and its residents and ensure that the County pays a fair price for necessary, quality products and services. We also recommend that comprehensive due diligence re-assessments be undertaken, independent of the Department or Agency involved, when adverse information becomes known about a vendor, contract, or program, with which the County is associated.

## II. Background

In June 2016, MCPS entered into a contract with FMS to provide a School Bus Safety Camera Program in Montgomery County. Although MCG is not a direct party to the MCPS contract, an MOU exists between MCG and MCPS under which the County assumes certain contractual responsibilities. These include: (1) MCPD review and evaluation of possible violations, (2) collecting and processing fines under a process substantially the same as the one used by the MCPD Automated Traffic Enforcement Unit for red light and speed camera violations, and (3) making supplemental appropriations to MCPS for payments to FMS based on the anticipated ticket revenue. MCPD indicated its intention to use the \$250,000 included in the fiscal year (FY) 2017 budget for the school bus camera contract to fund three new employees to process a larger than expected number of tickets. Based on this statement, from the inception of this contract, we estimate that the County has spent approximately \$750,000 from its operating budget for additional MCPD positions related to this program.<sup>4</sup> Although over \$10 million of ticket revenue has been transferred to the vendor, neither the County nor MCPS (based on the contract) has received any ticket proceeds from this program.

In 2018 the CEO of FMS (Robert Leonard), a non-FMS business associate, the Dallas County Schools Superintendent (Rick Sorrells), and the Mayor Pro Tem of Dallas (Dwaine Caraway) all pleaded guilty to crimes involving bribes and kick-backs paid to public officials in Dallas in exchange for favorable actions furthering FMS' local business interests. These interests mainly involved the implementation and operation of a School Bus Stop Light Camera enforcement program.<sup>5</sup> Mr. Leonard was sentenced in May of 2019 to serve seven years in prison for what federal prosecutors described as “the largest domestic public corruption case in history.”<sup>6</sup>

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*the effort? The need for a business case.* Paper presented at PMI® Global Congress 2009—North America, Orlando, FL. Newtown Square, PA: Project Management Institute. <https://www.pmi.org/learning/library/need-business-case-6730> (accessed June 18, 2019).

<sup>4</sup> MCPD stated that \$250,000 in FY 2017 was appropriated for three new positions.

<sup>5</sup> According to a press release from the United States Attorney's Office in the Northern District of Texas dated August 8, 2018.

<sup>6</sup> <https://www.nbcdfw.com/investigations/Man-Behind-the-Cameras-Scheduled-for-Sentencing-in-DCS-Scandal-509933161.html?amp=y> (accessed May 15, 2019).

In October 2017, MCPS signed an amended contract and MOU with MCPD, acknowledging the assignment of the FMS contract to what was described as a separate company named BusPatrol America LLC (BusPatrol).

### III. Inquiry and Outcomes

We initially contacted the MCPS Chief Operating Officer (MCPS COO) to obtain general information and to determine which departments of MCG were involved in this program. He indicated that the School Bus Safety Camera Program was brought to MCPS by the MCPD as a traffic enforcement initiative; but the contract was between MCPS and FMS. He emphasized that MCPS is always concerned about student and pedestrian safety and indicated a significant interest in the added benefit of having access to a system providing surveillance cameras inside the buses.

The MCPS COO clarified that MCPS is a willing partner in the program and not just a third party to the program. He expressed support, without reservation, about the program despite the program/company affiliation with the former CEO of FMS who was recently sentenced to seven years in prison and ordered to pay \$125 million in restitution for his involvement in the conspiracy.

We learned that on behalf of MCG, the MCPD signed an MOU with MCPS accepting certain responsibilities under the contract. Responses to our draft report, provided by MCPS, suggest this contract/MOU relationship was considered necessary by both parties due to the respective responsibilities and requirements of MCPS, FMS, and MCPD regarding the program. Additionally, those responses demonstrate that even though this was a “Bridge”<sup>7</sup> contract between MCPS and FMS, the terms, product, and services were extensively negotiated over a significant period. MCPD staff told us that they actively participated in those negotiations.

We learned that MCPD contacted and consulted various other departments and offices in the County government, but those offices largely declined to get involved or had minimal involvement since the contract was between MCPS and FMS.<sup>8</sup> The exception to this was the involvement of the Office of County Attorney. Information provided to us gives the impression that, since the millions of dollars generated and transferred to the vendor were not tax revenue or subject to County budget processes and controls, the normal County offices responsible for those activities did not have the mandate to intervene.

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<sup>7</sup> Bridging is a process where a governmental entity participates in an existing competitively bid contract in place with another public entity.

<sup>8</sup> These included the County Finance Department and Office of Procurement.

**Finding 1: The business case for this program was built around the desired use of a predetermined vendor rather than an objective analysis to design an effective and economical method to achieve an identified outcome.**

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**a. The MOU and the MCPS Bridge Contract**

Large contracts awarded by MCPS typically require the utilization of public bidding procedures. This protects the integrity of the decision process and ensures the best value for the County. An exception to this requirement is outlined within the Maryland Education Article Section 5-112 and restated in the MCPS procurement policy, indicating that MCPS may “participate” in contracts issued by other public agencies “if the lead agency for the contract follows public bidding procedures.”<sup>9</sup> (Participation in another contract is hereafter referred to as a “bridge contract”.) According to the contract and the MOU, “MCPS is participating in an existing contract awarded under RFP 22-10 – School Bus Safety Program, from the East Baton Rouge Parish School Board...”

Bridge contracts do not go through the normal procurement channels and provide an expedited manner to engage in contracting. According to the MCPS Procurement Manual, a bridge contract involves participation in the same contract competed by a different public agency.<sup>10</sup> According to the Maryland Office of State Audits, interpretations of the rules and laws applicable to the school system would be guided by the principle that better terms are acceptable.<sup>11</sup>

In this case, MCPS bridged/participated in a contract that was originally awarded by the East Baton Rouge Parish School Board (EBRPSB)<sup>12</sup> in Louisiana to a company called BusGuard in 2011.<sup>13</sup> Documents indicate that the name of the company was later changed from BusGuard to Force Multiplier Solutions and an extension of the contract term was made to 2021. In response to our inquires for information about this contract, EBRPSB provided conflicting accounts about whether any work was performed on this contract after 2015/2016 and expressed significant reservations about the vendor (FMS). However, EBRPSB indicated support for the program itself.

Based on our review of the contracts, the contract bridged by MCPS appears to have terms more favorable to EBRPSB than MCPS received under its contract with FMS. Although the programs appear similar, the EBRPSB program is structured quite differently and resulted in immediate ticket revenue for both EBRPSB and the East Baton Rouge Sheriff’s Office. Under

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<sup>9</sup> MCG is also authorized to enter into bridge contracts, subject to certain requirements, under Montgomery County Code Sec. 11B-42.

<sup>10</sup> MCPS Procurement Manual Sec. 1 p. 2; Sec. 20, p.28.

<sup>11</sup> Maryland State Finance and Procurement Code Ann. Sec. 13-110 and COMAR 21.05.09.04 suggest that better terms are acceptable by describing the purposes of these types of contracts as providing cost benefits to the State; promotion of administrative efficiencies; promote intergovernmental cooperation; is in the best interest of the State; and does not intend to evade procurement rules contained in another section of the Code and under COMAR.

<sup>12</sup> For readability in the context of this document, the East Baton Rouge Parish School District, East Baton Rouge School System, and The East Baton Rouge Parish School Board will collectively be referred to by the acronym "EBRPSB".

<sup>13</sup> Issues related to the underlying contract and its use for bridging are governed by MCPS procurement rules and beyond the scope of this document.

the MCPS contract, FMS retains all ticket revenues until the contractor recoups its investment costs (estimated at approximately \$18 million). It remains unclear whether MCG or MCPS will receive any citation revenue in the future. In contrast, the EBRPSB contract is explicit about the fee sharing agreement and who receives citation revenue.

MCPS expressed the opinion that the terms that it negotiated are at least equivalent to and likely more favorable than those in the EBRPSB contract that was bridged. We were told of extensive negotiations involving technical requirements, prices per camera, revenue sharing amounts and timing of those payments, by whom and how ticket revenue is processed for collection, and the number and location of camera units deployed. We note that the MCPS contract includes internal audio and visual surveillance unrelated to stop arm enforcement.

MCPS further explained that there was no reasonable way, given budget constraints, to outfit the large fleet of MCPS school buses in the time frame, with significant benefits to student and public safety without structuring the contract this way.

While we appreciate the position of MCPS and recognize the extensive contract negotiations conducted by the County and MCPS, those negotiations are a reason we remain skeptical of the efficiency and value to the State (an implied requirement under state law)<sup>14</sup> in using this bridge contract/MOU arrangement. These activities appear to be the types of administrative burdens that the bridging process is intended to alleviate. At the same time, the use of the bridged contract in this instance forgoes the benefits achieved through a competitive bidding process.

We found additional concerns in the wording of the MCPS contract, which requires the County “to remit 100% of Fines received . . . until such time that the Contractor recovers the costs of its initial and *ongoing capital investment* . . .” (emphasis added),<sup>15</sup> at which point FMS will be compensated under a revenue sharing agreement which is to be negotiated during the term of the contract.<sup>16</sup> The contract reveals that “Cost of Investment Estimate”, includes up to “\$1,000,000” per year in “operating costs.” Under the terms of the contract it appears that these operating costs are defined in the contract to include the following:<sup>17</sup>

- a) repair and replacement of cameras
- b) citation preparation and mailing
- c) payment processing
- d) training
- e) ongoing costs related to maintenance on contractor vehicles
- f) ongoing costs related to contractor offices

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<sup>14</sup> See footnote 11.

<sup>15</sup> Section X (B) MCPS Bus Contract with Force Management Solutions signed June 30, 2016.

<sup>16</sup> The contract states that the parties will “enter into negotiations to determine a revenue sharing plan to take effect once the Contractor has recovered its Cost of Investment” which is to be finalized within “the 24<sup>th</sup> month after the date first above written.” At the time of our review it had not been agreed on. The contract does include a stipulation that the parties may extend the period of negotiations through a mutual agreement in writing.

<sup>17</sup> Section X (B) 1 (c) MCPS Bus Contract with Force Management Solutions signed June 30, 2016.

- g) Contract management costs
  - 1. costs for program management and leadership personnel
  - 2. undefined travel and document retention

Because the “Cost of Investment” described in this contract includes ongoing operating costs, it is possible that it may never be fully recovered by the contractor, and this \$1 million a year fee may be on top of any revenue splitting agreement that may be reached.

It is also not clear whether MCPS will obtain ownership of the camera system for which it has paid.<sup>18</sup> The contract states that upon contract termination, FMS is responsible for the removal of the equipment. The recitals section of the contract states that the contract is to “install, operate, and maintain certain equipment”. It appears the referenced equipment is the “BusGuard system™” which is comprised of all the hardware (cameras) and its associated software,<sup>19</sup> but no clear indication was found as to who really owns the equipment. This point was also reported as a significant source of contention in the FMS-Dallas County Schools civil court case.<sup>20</sup>

Based on the totality of the circumstances, supported by the wording of an MCPD memo dated September 2015, it appears that essentially a sole source vendor was identified, and the MCPS procurement/bridging process was used to develop the contract after most of the significant terms of the contract were re-negotiated by MCPD and MCPS. This contract was then linked to the County via an MOU signed at the MCG departmental level.

One significant impression resulting from our analysis of the facts associated with this situation was that despite this program generating well over \$10 million in revenue (to date) for the vendor, the MOU was not subjected to prudent procedural considerations by MCG. This appears to arise from the concept presented by the MCPD and MCPS to members of the County Council that because these funds came directly from traffic violations assessed to county residents and drivers, rather than from the operating budget of a County agency or department, the program comes at “No Cost” to the County.

We note that regardless whether the revenue comes from taxes or citations, the source of those funds is largely the same: County residents and taxpayers. The County should exercise good stewardship of those funds and ensure that purchases are reasonable and necessary, and the best products and services are received for the best price.

#### **b. The Cost to the County**

Council Committee members were told, on multiple occasions, that the MCPS camera program comes at no cost to the County. On July 11, 2016, in support of the initial contract, information

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<sup>18</sup> The Cost of Investment subsection of the contract states that the \$18,974,246 value of the contract includes “BusGuard™ System equipment and hardware; at \$9,758.00 per school bus” with an additional “\$1,100.00 per school bus” for installation of the BusGuard™ System.

<sup>19</sup> We found information that in 2014, school bus stop light enforcement camera systems could be purchased for under \$2,000 per bus. This suggests that the costs for the system provided by FMS (described in footnote 8) are likely related to the other cameras and audio devices installed by FMS.

<sup>20</sup> <https://texasmonitor.org/school-districts-left-in-dark-as-bus-camera-company-closes/> (accessed May 24, 2019).

provided to the Council Public Safety and Education Committees by MCPD stated that FMS would absorb all the cost to outfit the entire MCPS bus fleet at no cost to the County or MCPS. The program, and FMS investment in start-up costs of up to \$18 million to outfit the 1200 bus fleet, was repeatedly characterized as “too good to be true.”<sup>21</sup> Councilmembers present expressed appropriate skepticism at both the cost and the business model presented during the initial presentation and requested additional supporting data. We are not aware of what additional information may have been provided.

During early program presentations to the Council Public Safety and Education Committees, it was made clear that as a condition of the contract, the County Government (MCG) would be required to fund several new staff positions to review citations issued under the program. A July 7, 2016 memo jointly addressed to the Public Safety and Education Committees states that “MCPD plans to use the \$250,000 included in the FY 2017 budget for the school bus camera contract to fund three new employees needed to process the larger expected volume of tickets.” However, at a more recent Education Committee and Public Safety work session it was again suggested that the program comes at no cost to the County. So far, Montgomery County has spent over \$750,000 from its operating budget to enable the vendor to recover what the contract defines as the vendor’s costs of investment.

We note, in comparison, that under the EBRPSB contract, the immediate revenue stream generated by violator fines could cover or exceed the costs to EBRPSB with no additional expenditures required from EBRPSB. In the EBRPSB contract, BusGuard (FMS) retains ownership of the cameras and equipment used and is responsible for all costs associated with the installation and administration of the camera program. It does not appear this is the case in the MCPS contract. East Baton Rouge law enforcement continues to review and approve citations; however, ticket revenues are split 70% (BusGuard)/ 20% (EBRPSB)/ 10% (Sheriff’s Office) immediately.

Vendor supplied information from the five-month pilot program, provided to the Council Public Safety and Education Committees, does not address any improvement in student or pedestrian safety or collision reduction. However, the documents do address routes with the highest number of violations which logically translate to the highest revenue production. Additional data provided by the vendor does not document reductions in total violations but does provide measurements of the reduction in recidivist violators.

Data supplied by MCPS indicates that during the term of this contract, violation rates have remained relatively steady and in one year slightly increased. We contacted both MCPD and the Maryland State Police and requested data on school bus stop light violations resulting in pedestrian collisions in Montgomery County; neither agency could locate any record of such a collision in Montgomery County for at least the past eight years.

According to legal counsel for the Dissolution Committee for the Former Board of Trustees of Dallas County Schools, “The Stop Arm Camera Program suffered consistent losses during the fiscal years from 2012 to 2016, and independent forensic accountants determined that the Stop

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<sup>21</sup> This quote is from the legislative document package presented July 7, 2016 to the Council Public Safety and Education Committees in support of this program.

Arm Camera Program would not be effective as it was structured.” This was during the same time period that an FMS supplied “customer” (actually a co-conspirator, the Dallas County Schools Superintendent) verified the success of the program to MCG and MCPS officials.

Although we have not undertaken a forensic accounting review of the MCPS program, it appears to be structured much like the Dallas County School District program which ultimately led to the bankruptcy of the school district. Much like the situation in Dallas County, Montgomery County appears to potentially bear the financial burden of vendor failure.

Our review also noted that the revenue sharing agreement with the vendor has not yet been reached and any revenue split between MCPS and MCG is not yet settled. It is unclear to us when, or even if, the County will recover its investment in this program or what happens to any revenue stream after that point. Audits and additional research need to be done on this issue, but it appears that this is not a “no cost” program to the County, even if it is a no cost program to MCPS. Finally, performance measures used in proposals and provided in supplemental materials to the Council Public Safety and Education Committees do not seem to have any measurable impact on or correlation with improvements in pedestrian or traffic safety or collision reduction.

#### **Recommendation 1**

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**All agreements involving financial transactions, regardless of the source of the funds, should be subjected to a documented objective business case analysis to protect the interests of the County and its residents and ensure that the County pays a fair price for necessary, quality products and services. Programs should have measurable outcomes and objectives.**

**Finding 2: County officials relied, at least in part, on information provided by a criminal conspirator in vetting FMS and this program, and they continued to rely on vendor (FMS/BusPatrol) supplied information when considering the future of the program.**

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In August 2015, prior to entering into the bridge contract, MCPS and MCPD officials traveled to Dallas, Texas to meet with FMS officials to “get a first-hand look at their product and operation”.<sup>22</sup> During that trip, the former president and chief operating officer of FMS, who is currently the president of BusPatrol, introduced MCPS and MCPD officials to the Dallas County Schools Superintendent “to get feedback on the product and the safety program.” The Dallas County Schools Superintendent subsequently pleaded guilty to receiving bribes regarding the operation of this program in Dallas. In deciding to contract with FMS, MCPS and MCG appear to have relied upon information provided by the Dallas County Schools Superintendent who, unknown to MCPD and MCPS, was actively accepting bribes from FMS while recommending the program.<sup>23</sup>

Based on comments made during testimony before the Council Education Committee on September 27, 2018, it appears that even after significant adverse information came to light, MCG and MCPS may have continued to rely on information provided by the vendor.<sup>24</sup> An MCPD employee commented during the Education Committee work session that the United States Department of Justice (DOJ) was “aware and even blessed the takeover” of BusPatrol by FMS. OIG staff contacted the assigned prosecuting Assistant United States Attorney for the Northern District of Texas, to ask whether the activities of BusPatrol were blessed by DOJ. In response, the prosecuting attorney wrote, “We were aware, but haven’t blessed anything.” A statement that the DOJ had somehow “blessed,” or approved the assimilation of FMS into BusPatrol, would likely have been relied on by the Education Committee to alleviate concerns regarding continued MCG involvement with this contract and BusPatrol/FMS. The fact that this vendor supplied statement appears to be incorrect should be explored further.

We also question how BusPatrol was able to step into the role of FMS in the MCPS contract given that the current CEO of BusPatrol (formerly with FMS Canada) speaking about the acquisition<sup>25</sup> of FMS, was quoted as saying “BusPatrol bought only the company’s assets, particularly its intellectual property, *but not its contracts or its liabilities*” (emphasis added).<sup>26</sup>

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<sup>22</sup> According to a July 7, 2016 packet provided to the Council Public Safety and Education Committees and provided again at the September 27, 2018 Education Committee work session.

<sup>23</sup> In an April 6, 2018 letter to the MCPD, the CEO of BusPatrol wrote that he hired the current president of BusPatrol to provide experienced leadership and referred to him as an “independent contractor who consulted with FMS” when in reality he was the president of both FMS and BusPatrol.

<sup>24</sup> Id.

<sup>25</sup> The OIG continues to question the relationship between BusPatrol and FMS. We found substantial evidence linking numerous corporate name changes and entity creations in multiple jurisdictions, including in Canada, and involving many of the same people. These include Ongo, Ongo Live, FMS (or FXS), BusGuard, BusPatrol, Patriot BusGuard, and various variations of these names.

<sup>26</sup> This comment was made during an interview regarding the relationship between BusPatrol and FMS [https://www.theadvocate.com/baton\\_rouge/news/education/article\\_f5622ab8-0dbe-11e8-af67-8bce44ab14a0.html](https://www.theadvocate.com/baton_rouge/news/education/article_f5622ab8-0dbe-11e8-af67-8bce44ab14a0.html) (accessed December 10, 2018).

Responding to our concern about this statement, MCPS provided a letter on Canadian law firm letter head, signed by a Canadian attorney on August 21, 2017, that allegedly verifies, contrary to the statement of the CEO of BusPatrol, that BusPatrol did purchase the contracts of FMS. That attorney is listed in Canadian legal documents as a co-director of BusPatrol Canada with the CEO of BusPatrol. This letter appears to be designed to give the impression that it is from independent legal counsel when it is nothing more than a self-serving verification from BusPatrol. The business relationship between the attorney and the CEO of BusPatrol as co-directors of BusPatrol Canada was not disclosed in the letter.<sup>27</sup> Although we did not evaluate whether the statement in the letter was legally correct, we remain concerned about the lack of disclosure.<sup>28</sup>

Another factor considered during our examination of the County's connections, through the MOU, with this vendor involves the numerous assertions made by BusPatrol and its employees, and echoed by MCG employees, that FMS was a separate company and that BusPatrol acquired its assets.

While BusPatrol and FMS may technically be different corporate entities, they remain at the same address, with the same telephone number, and using the same equipment on the same contracts. The president of FMS is now the president of BusPatrol and is the same person who introduced a criminal conspirator to County and MCPS employees. Furthermore, it was also discovered that the current CEO of BusPatrol is listed in Canadian legal documents as being a Co-Director of Force Multiplier Solutions Canada (which filed a corporate name change to become BusPatrol Canada).

It is not apparent that any significant due diligence process took place concerning information supplied by the vendor even after significant adverse information came to light. However, both MCPD and MCPS appear to remain reluctant to re-assess the MOU or the contract and continue to rely on vendor supplied information to justify the business case and public safety value of the program.<sup>29</sup>

Given the continuity of key people, history of corporate name changes and the pattern of misinformation provided, a prudent response of healthy skepticism appears appropriate before transferring millions of dollars from the drivers of Montgomery County to this company. As a result, we regard the contract and MOU as needing careful review by MCPS and the County Attorney.

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<sup>27</sup> The Canadian Model Code of Professional Conduct § 7.3-1 [1] states "A lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client." <https://flsc.ca/wp-content/uploads/2014/12/Model-Code-as-amended-march-2016-FINAL.pdf> (accessed May 25, 2019).

<sup>28</sup> *Id.*

<sup>29</sup> Based on information from MCPD, Maryland State Police (via the University of Maryland) and MCPS, we were unable to find any evidence of a decrease in collisions, improved public safety, or a reduction in total violations from this program. Vendor supplied data, provided to us by MCPD, did support a reduction in recidivism, which the MCPD and the vendor claim represents an increase in public safety. We did not attempt to support or disprove this position. Data supplied by MCPS indicates the program has not resulted in any decrease in violations.

## Recommendation 2

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To protect the interests of the County, when adverse information becomes known about a vendor, contract, or program with which the County is associated, a comprehensive due diligence reassessment should be undertaken, independently of the Department or Agency involved. Those findings and recommendation should be documented.

### IV. Other Matters for Consideration

#### a. Interception and recording of oral communications under Maryland law

According to the FMS/MCPS contract, and advertising literature from FMS, some of the interior cameras installed have audio recording and remote audio monitoring capabilities. We are aware that Maryland law has significant restrictions on monitoring and recording private oral communications absent consent of both parties.<sup>30</sup> We have concerns regarding the applicability of Maryland State law to a private company monitoring and collecting audio recordings for MCPS, which are not directly related to a law enforcement investigation. It appears that in most cases the surreptitious monitoring and recording of private communications, when allowed, is restricted to law enforcement related investigations and activities, absent consent of the parties. When, how, and if these capabilities are used is not known to us, but we are concerned about the implications and any responsibility that may attach to MCG regarding the use of this system.

Regarding this issue, MCPS indicated that it relied on a May 20, 2005 memorandum written by an assistant Attorney General in the Maryland Department of Education in which the author concurred with the Dorchester County Attorney's opinion that audio recording of children on a school bus is legal. Since significant time has passed since that memorandum was written and the Maryland Court of Appeals has recently published case law<sup>31</sup> relevant to this matter, it may be appropriate to refer this issue for an Attorney General legal opinion.

#### b. Montgomery County Interim Administrative Procedure 2-4

The use of an MOU in this situation raised significant questions and concerns about the sufficiency of the processes, procedures, and controls in place at the time to protect the County and the taxpayers. Partially in response to a separate OIG review,<sup>32</sup> the County adopted interim Administrative Procedure 2-4 on September 11, 2018 titled "*Agreements between Montgomery County Government and Other Organizations*" to help manage the MOU process.<sup>33</sup>

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<sup>30</sup> See Generally Maryland Courts and Judicial Proceeding 10-402. See also Maryland Courts and Judicial Proceeding 10-403, *Cloyd James Holmes v. State of Maryland*, MD Court of Special Appeals No. 2575, September Term 2016. Opinion by Alpert, Paul E., J. (Senior Judge, Specially Assigned).

<sup>31</sup> *Id.*

<sup>32</sup> *A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds*. OIG Report 19-002; dated November 19, 2018.

<sup>33</sup> This is a temporary/interim Administrative procedure and is currently under review.

Administrative Procedure 2-4 was not in place at the time the FMS contract or MOU was executed or subsequently amended. However, we took the opportunity to retroactively apply facts we learned in this case against the requirements of the new interim administrative procedure to assess whether our concerns would have been resolved had Administrative Procedure 2-4 been in place when the County entered the MOU with MCPS. We found that the actions of County staff technically would have complied with this new requirement. However, it does not appear that it would have effectively protected the County's interests.

## **V. Summary and Conclusions**

MCG entered into an MOU through the MCPD which obligates the County to some responsibilities under a contract between MCPS and a private company. The MCPS contract was a bridge contract based on an existing contract between an out-of-state school district and the same company. The terms of the MCPS contract were extensively negotiated and appear to be significantly different than those in the bridged contract. Although disputed by MCPD and MCPS, we found that the current contract terms appear to be ambiguously, and generously, tilted toward profitability for the vendor to the disadvantage of residents of Montgomery County. So far, the County has paid out over \$750,000 of tax dollars for administrative and personnel expenses related to this program and has transferred over \$10 million in ticket revenue to the vendor; however, neither Montgomery County nor MCPS has received any ticket revenue yet, and it is unknown when they will.

After the execution and implementation of the MOU, significant adverse information about the vendor and people associated with the vendor came to light involving criminal convictions for various federal crimes, including bribery, relating to the operation of a similar program in another state. The level of this conspiracy was such that it bankrupted the Dallas County School District. Although the current vendor claims it is a new company, other than changing the name, except for the CEO, many of the same managers, employees, equipment, and contracts are still in place. It does not appear that any significant critical reevaluation of the relationship or the vendor was conducted after MCG, MCPD, or MCPS learned this information. The hypothetical application of the new Administrative Procedure (retroactively) indicates that the new procedure would likely not have prevented the development of this MOU.

## **VI. Executive Responses to Our Report**

### **a. Montgomery County Chief Administrative Officer's Response**

The response from the Montgomery County Chief Administrative Officer (CAO) to the final draft advisory memorandum is included in Appendix C. The CAO generally concurred with our recommendations.

Nothing in the CAO's response caused us to alter our report.

### **b. MCPS Chief Operating Officer's Response**

The response from the Montgomery County Public Schools Chief Operating Officer (MCPS COO) to the final draft advisory memorandum is included in Appendix D.

Nothing in the MCPS COO's response caused us to alter our report.

### Objectives, Scope, and Methodology:

Staff of the Office of the Inspector General conducted this review in order to:

1. Determine the nature and extent of the relationships created by the MOU and contract regarding MCG, MCPS, and FMS (now BusPatrol) and to test the provisions of Administrative Procedure 2-4 against those findings;
2. Determine if there were any vulnerabilities or other issues created by the contract and its associated MOU for either MCPS or MCG; and
3. Determine if other relevant facts exist that should be brought to the attention of MCG officials regarding this vendor, contract, or MOU.

We reviewed the contract and the associated MOU (with amendments), reviewed applicable laws, regulations, and procedures, interviewed various involved parties, and researched corporate filings in numerous jurisdictions including Canada.

Our review was conducted in accordance with Principles and Standards for Offices of Inspector General issued by the Association of Inspectors General.

Interim Administrative Procedure 2-4  
“Agreements between Montgomery County Government and Other Organizations”

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<p><b><u>PURPOSE</u></b></p> <p>1.0 To establish policies and procedures for the preparation, review, clearance, approval, and monitoring of an Agreement.</p> <p><b><u>DEFINITIONS</u></b></p> <p>2.0 ADVANCE PAYMENT – A payment for goods or services prior to the receipt of the goods or services, and prior to the receipt of an invoice.</p> <p>2.1 AGREEMENT – A contractual relationship between Montgomery County Government (“County”) and other Federal, State and local agencies, non-governmental organizations, or organizations having complementary missions or requiring the exchange of information, goods, or services with the County in order to fulfill the County’s or other organization’s own mission. Such contractual relationships are not subject to Chapter 11B of the Montgomery County Code (<i>Contracts and Procurement</i>) and implementing regulations. Agreements may involve payment, including Advance Payments, of County funds to, or the receipt of funds by the County from, such organization. Agreements include Memoranda of Agreement (MOAs) and Memoranda of Understanding (MOUs).</p> <p>2.2 CONTRACTOR – The party, organization, or entity entering into an Agreement with the County.</p> <p>2.3 RESPONSIBLE DEPARTMENT/OFFICE – The Montgomery County Government department or office organizational unit that utilizes or facilitates the exchange of information or services contemplated under an Agreement.</p> <p>2.4</p> <p><b><u>EXCLUSIONS</u></b></p> <p>3.0 This policy does not apply to the following types of contractual relationships:</p> <ul style="list-style-type: none"> <li>A. Procurement contracts subject to Chapter 11B (Chapter 11B) of the Montgomery County Code;</li> <li>B. Collective bargaining agreements; and</li> <li>C. Exempt transactions that are not required to be evidenced by an Agreement, as listed on Exemptions List Form PMMD-148 at <a href="http://www.montgomerycountymd.gov/mcgp/PMMD148">www.montgomerycountymd.gov/mcgp/PMMD148</a> (see “N” under Agreements column).</li> </ul> <p><b><u>POLICY</u></b></p> <p>4.0 An Agreement between the County and the Contractor shall be properly established prior to: (1) requesting goods or services from, (2) providing goods to or performing services for, or (3) undertaking activities of a collaborative nature with a Contractor. The Agreement shall be developed</p>		

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<b><u>POLICY (Cont'd)</u></b> <p>and approved under the appropriate legal authorities with necessary reviews, coordination, and clearances as required under this policy. Coordination and reviews ensure that an Agreement is in the proper format, reflects the appropriate authority for the specific Agreement, protects County interests, is consistent with County policies and plans, and does not violate any applicable laws.</p> <p>4.1 No employee or representative of the County shall use the policies or procedures contained in this policy to circumvent statutory and regulatory requirements relating to the award of procurement contracts pursuant to Chapter 11B.</p> <p>4.2 This policy assigns responsibilities and establishes general policies and procedures for the preparation, review, clearance, approval, and monitoring of an Agreement. The policy is for internal use by County personnel and does not create any rights or liabilities with respect to the public or any third party. This policy applies to all Agreements, including those not written or prepared by County officials, that must be approved by a County official, except as excluded under Section 3.0 above.</p>		
<b><u>GENERAL</u></b> <p>5.0 Before developing an Agreement, a Responsible Department/Office shall consider the activities and nature of the transaction that it wants to accomplish and determine whether an Agreement is the correct legal instrument.</p> <p>5.1 If a Responsible Department/Office seeks to pursue the appropriate contractual relationship through an Agreement signed by either the Chief Administrative Officer (CAO) or another County official specifically delegated such authority by the CAO or by law or regulation, the Agreement shall be reviewed and approved by the Office of the County Attorney (OCA) and other departments as set forth in this policy. The CAO may delegate authority to sign an Agreement to another County official; all other requirements of this policy shall apply.</p> <p>5.2 An Agreement shall be subject to general terms and conditions, referred to as <i>General Terms of Agreement Between County and Contractor</i> ("General T&amp;C"), which shall be defined, maintained, and updated by OCA. The General T&amp;C may not be revised or modified without the prior approval of OCA. In situations involving financial-related terms, changes to the General T&amp;C are subject to additional approval of the Department of Finance (Finance).</p> <p>5.3 An Agreement involving the disbursement or receipt of funds shall be subject to Finance accounts payable or accounts receivable policies and procedures, respectively, on the Finance sharepoint site at <a href="http://www.montgomerycountymd.gov/mcg/controller">www.montgomerycountymd.gov/mcg/controller</a> (select Accounts Payable or Accounts Receivable) and <a href="http://www.montgomerycountymd.gov/mcg/electronic_payments">www.montgomerycountymd.gov/mcg/electronic_payments</a>. An Agreement shall be reviewed and approved by Finance if at least one of the following conditions applies. The Agreement:</p> <p style="padding-left: 40px;">A. Involves an Advance Payment to another party, except where such advance is considered part of a commercially-acceptable practice as in the case of equipment and software</p>		

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<b><u>GENERAL (Cont' d)</u></b>		
maintenance, periodical subscriptions, registrations, travel, catering service, licensing fees, and insurance premiums; or		
B. Involves indemnification or insurance requirements.		
5.4 An Agreement involving an Advance Payment as described in paragraph 5.3 shall be subject to Finance policies and procedures in <i>Advance Payment for Contracts</i> on the Finance sharepoint site at <a href="http://www.montgomerycountymd.gov/mcg/AP_procedures">www.montgomerycountymd.gov/mcg/AP_procedures</a> .		
<b><u>RESPONSIBILITIES</u></b>		
6.0 The Office of the County Attorney (OCA) shall:		
A. Review all proposed Agreements for form and legality.		
1. In the event that the transaction that the Responsible Department/Office seeks to enter into is subject to the County's Procurement Law under Chapter 11B, OCA will refer the Responsible Department/Office to the Office of Procurement, as appropriate.		
B. Assign a County identification number to the Agreement.		
C. Maintain an inventory of all Agreements, to include the identification number, Responsible Department/Office and other party(ies) to the Agreement; annual dollar amount of funds and designation as funds to be received, paid, or an Advance Payment; and date of signature by CAO (or other delegated County official).		
D. Ensure an Agreement includes appropriate terms and language agreed to with the Department of Finance or a department other than the Responsible Department/Office, or as otherwise noted in this policy.		
E. Establish, maintain, and update as appropriate, general terms and conditions for all Agreements.		
F. Evaluate and render a decision on any request from a Responsible Department/Office to waive an Agreement general term or condition, including consulting with and obtaining Department of Finance approval when a request for waiver involves financial-related terms.		

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<b><u>RESPONSIBILITIES (Cont'd)</u></b>		
<p>6.1 The Responsible Department/Office shall:</p> <ul style="list-style-type: none"> <li>A. Coordinate as necessary with each party to an Agreement to identify the responsibilities of each party and the activities to be undertaken.</li> <li>B. Prepare the Agreement, except if subject to paragraph 6.1C, incorporating all requirements of this policy.</li> <li>C. For Agreements not prepared by the County, review the Agreement presented to the department/office, negotiate as necessary, and ensure that the Agreement follows the County review and approval process, including review by OCA; and Finance if applicable under paragraph 5.3.</li> <li>D. Coordinate with Finance on insurance requirements to be included in the Agreement or its general terms and conditions.</li> <li>E. Coordinate with the OCA on any request to waive an Agreement general term or condition.</li> <li>F. If applicable, coordinate with Finance on approval of an Advance Payment, consistent with the Advance Payment Policy.</li> <li>G. For Agreements involving the payment of funds, certification from the Office of Management and Budget of its determination of the availability of sufficient funds to support the Agreement is required. Soon after execution of the Agreement, a direct purchase order must be established in the County's financial system of record unless the goods or services being acquired are an exception under Finance's Authorized Payment Policy at <a href="http://www.montgomerycountymd.gov/mcg/authorized_payments">www.montgomerycountymd.gov/mcg/authorized_payments</a>.</li> <li>H. Monitor performance and progress under the Agreement to ensure that Agreement activities are being performed consistent with the provisions of the Agreement. Track and monitor the goods or services provided for purposes of validating that amounts billed are appropriate and in compliance with the Agreement.</li> <li>I. Ensure that payments are made and received according to the conditions of the Agreement.</li> <li>J. Maintain a complete file for each Agreement, including all documentation related to the Agreement and financial transactions, if any, resulting from the Agreement.</li> <li>K. If applicable, develop and provide to Finance a plan including available budget for implementing any audit requirement under the Agreement.</li> </ul>		

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<p><b><u>RESPONSIBILITIES (Cont'd)</u></b></p> <p>L. Upon receipt of the fully executed Agreement from the CAO, distribute copies of the executed Agreement to the Contractor, other County departments that reviewed the Agreement, and other party(ies) as appropriate, for their records. [NOTE: The Office of the CAO shall electronically distribute copies of the executed Agreement to OCA, Finance, and the Responsible Department/Office.]</p> <p>M. Prepare amendments to an Agreement if the costs or scope of the Agreement will be changed. Facilitate re-review of the Agreement by Finance, OCA, and OMB.</p> <p>6.2 The Department of Finance shall:</p> <p>A. If the Responsible Department/Office is obligating funds and is not an authorized exception from related Finance direct purchase order policy reflected in the Authorized Payment Policy, ensure that the obligation is properly encumbered as a direct purchase order once the Agreement (or amendment to obligate additional funds) has been signed by all parties.</p> <p>B. If applicable, evaluate and approve or deny the request for Advance Payment from a Responsible Department/Office.</p> <p>C. Process transactions and maintain records consistent with County policy for financial transactions relating to an Agreement, including payments, Advance Payments, and accounts receivable/collections.</p> <p>D. For an Agreement involving an Advance Payment consistent with paragraph 5.3, determine any additional specific audit requirements, ensure that the appropriate right to audit and audit access clause language is included in the Agreement, and ensure that the Responsible Department/Office has a plan with appropriate resources identified and budgeted for to conduct any required financial audits.</p> <p>E. Ensure that insurance and indemnification requirements are addressed, and appropriate language is provided for incorporation into the Agreement.</p> <p>F. If applicable, and in consultation with OCA, evaluate and approve any request from a Responsible Department/Office to waive an Agreement financial-related general term or condition.</p> <p>6.3 The Office of Management and Budget shall:</p> <p>A. If an agreement requires a payment or Advance Payment, determine that sufficient funds are available in the first fiscal year in the applicable Responsible Department/Office appropriation to enter into the Agreement For multi-year Agreements, OMB's certification will be based on anticipated future appropriation levels, if known. In cases where Agreement costs are funded out of a much larger appropriated budget, OMB's certification</p>		

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<b><u>RESPONSIBILITIES (Cont'd)</u></b>		
may be based on a reasonability assessment since budgets are not appropriated on a line item basis.		
B. Determine the availability of funds if Agreements are amended because of cost or scope changes.		
6.4 The Chief Administrative Officer shall:		
A. Review, approve, sign, and execute an Agreement based on the recommendation of OCA.		
B. The Office of the CAO shall electronically distribute copies of the executed Agreement to OCA, Finance, and the Responsible Department/Office; and return the original executed Agreement to the Responsible Department/Office for further distribution.		
<b><u>PROCEDURE</u></b>		
7.0	Responsible Department/Office	Defines nature of goods or services to be acquired or to be provided by County. Determines that acquisition of such goods or services is exempt from Chapter 11B of the Montgomery County Code.
7.1	Responsible Department/Office	Prepares the Agreement in accordance with the policy on Agreement Provisions below. [NOTE: If an Agreement has been prepared by another party, the Responsible Department/Office shall review the proposed Agreement to ensure it adheres to the policy provided herein.] Obtains certification from the Office of Management and Budget that sufficient appropriation is available to enter into the Agreement.
7.2	Office of Management and Budget	Provides certification that sufficient appropriation is available to enter into the Agreement.
7.3	Responsible Department/Office	Submits the proposed Agreement, along with all other relevant documentation, to include approvals received from other County departments/offices, to OCA.
7.4	Office of the County Attorney	Reviews the proposed Agreement for form and legality. Assigns Agreement number

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<p><b><u>AGREEMENT PROVISIONS</u></b></p>		
8.0	<p><b>REQUIRED AGREEMENT PROVISIONS.</b> An Agreement’s content depends upon financial circumstances, purpose, and authorities. The elements below are required for all Agreements. OCA should be consulted for questions regarding the content of a specific Agreement.</p> <p>A. <b>Agreement Number.</b> An Agreement shall have an identification number assigned by OCA.</p> <p>B. <b>Parties and Scope.</b> An Agreement shall clearly identify each party, including any subcontractors, by legal name and address, and describe the purpose and objective of the Agreement.</p> <p>C. <b>Responsibilities of the Parties.</b> An Agreement shall specify the role of each party (who is doing what and when) and provide a clear and comprehensive description of the work to be conducted. The division of responsibilities and commitments of each side should be defined as precisely as possible. Where applicable, the Agreement should include goals, performance measures, deliverables, and a schedule of milestones. If an Agreement is for the provision of goods or services, then the Agreement shall clearly specify what the deliverables are and when they are due.</p> <p>D. <b>Authority.</b> An Agreement shall include citation(s) to the applicable authorities that permit the contemplated activities and/or the transfer of funds, including reference to all payments from the County being subject to available appropriations and the encumbrance of funds.</p> <p>E. <b>Estimated Costs and Accounting Information.</b> An Agreement shall specify the total estimated costs and, if appropriate, include a budget. An Agreement shall also explain the method and frequency (e.g., advance payment or monthly or quarterly reimbursement) with which payments will be made.</p> <p>F. <b>Term of Agreement.</b> An Agreement shall include a specified start date and completion date. In most cases, no Agreement shall extend beyond five years, and, in all cases, the parties should agree to appropriate interim review periods to ensure that the Agreement’s terms remain accurate and capture the continuing intent of the parties. Ideally, Agreements should be reviewed by the parties annually. OCA should be consulted where there are exceptional circumstances necessitating Agreements extending beyond five years.</p> <p>G. <b>Termination/Cancellation Clause.</b> An Agreement shall include provisions to address termination and collection of termination costs.</p> <p>H. <b>Right to Audit Clause.</b> A “right to audit and audit access clause” shall be included in every Agreement involving an Advance Payment that exceeds 1/12 (the equivalent of one month) of annual contract payments. This clause may also be included in other Agreements where deemed appropriate by OCA and Finance.</p>	

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<b><u>AGREEMENT PROVISIONS (Cont'd)</u></b>		
<p>I. <b>Resolution of Disagreements.</b> Each Agreement shall include a method of settling disputes and disagreements.</p> <p>J. <b>Governing Law/Venue.</b> Each Agreement must require that it be construed in accordance with Maryland Law, that such law will govern the resolution of all disputes, and that legal venue for the same will, as appropriate, be in the Maryland Courts located in Montgomery County, Maryland or the appropriate federal court located in the State of Maryland.</p> <p>K. <b>Contact Information.</b> An Agreement shall include each party's technical/programmatic and administrative/financial contacts.</p> <p>L. <b>Signatories.</b> An Agreement shall include signature and date lines for the officials duly authorized to sign the Agreement; normally this is the CAO, unless signatory authority for the Agreement has been specifically delegated to another County official, either by law or regulation or written delegation from the CAO. An Agreement is not effective, and, to the extent the Agreement involves the obligation of County funds (or state or federal funds), funds shall not be obligated until the Agreement is signed by all parties.</p> <p>M. <b>Information Disclosure.</b> The Maryland Public Information Act (MPIA) requires that the County release any documentary materials requested by a non-Governmental party, unless the materials are covered by one of the MPIA's exemptions. If a party to the Agreement requires a provision concerning the protection or confidentiality of information, it should always be "to the extent permitted by State and County laws and regulations."</p> <p>8.1 <b>PROHIBITED AGREEMENT PROVISIONS.</b> The following items shall not be included in the Agreement, unless agreed to by both OCA and Finance.</p> <p>A. <b>Indemnification Clauses.</b> The County cannot agree to indemnify or hold harmless the other party to the Agreement. If such language appears in a draft Agreement, it shall be deleted in its entirety.</p> <p>B. <b>Insurance Clauses.</b> The County is self-insured. Therefore, any clauses requiring the Government to purchase insurance shall be removed from the Agreement.</p>		
<b>DEPARTMENTS AFFECTED</b>		
9.0 All County Departments and Offices.		

## Chief Administrative Officer's Response



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

Andrew W. Kleine  
Chief Administrative Officer

July 15, 2019

### MEMORANDUM

**TO:** Edward L. Blansitt  
Inspector General

**FROM:** Andrew W. Kleine   
Chief Administrative Officer

**SUBJECT:** Inspector General Final Draft Advisory Memorandum – OIG Report #20-00x –  
*Memorandum of Understanding Regarding the School Bus Safety Camera Program*

Thank you for the opportunity to respond to the recommendations in your June 28, 2019, final draft advisory memorandum (Draft) entitled *Memorandum of Understanding Regarding the School Bus Safety Camera Program*. Following are the responses to the Draft's recommendations.

**Finding 1:** The business case for this program was built around the desired use of a predetermined vendor rather than an objective analysis to design an effective and economical method to achieve an identified outcome.

**Recommendation 1:** All agreements involving financial transactions, regardless of the source of the funds, should be subjected to a documented objective business case analysis to protect the interests of the County and its residents and ensure that the County pays a fair price for necessary, quality products and services. Programs should have measurable outcomes and objectives.

**CAO Response:** We generally concur with the recommendation. Interim Administrative Procedure (AP) 2-4, *Agreements between Montgomery County Government and Other Organizations*, was developed in response to a review conducted by the County's Office of Internal Audit (*Internal Control Review of Specific Procure to Pay Functions*, MCIA-18-1, May 9, 2018). That review found, in relevant part, that the County lacked a defined, documented policy that governs the process through which Agreements (i.e., MOUs, MOAs, etc.) are reviewed and exempted from procurement regulations; and recommended the development of a formal policy governing the review and approval of all Agreements. Subsequent to the issuance of the Interim AP, a workgroup comprised of representatives from the Office of the County Attorney, Office of Management and Budget (OMB), Office of Procurement, and

Edward L. Blansitt, Inspector General  
July 15, 2019  
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Department of Finance met to develop enhancements to the Interim AP prior to issuance of a final AP. The draft final AP, which is undergoing final review within the County, will require that the responsible department conduct and document an analysis that the contractor(s) is capable of fulfilling the requirements under the Agreement (determination of responsibility). The determination of responsibility would address, at a minimum, the following factors:

- The ability, capacity, organization, facilities, systems (including accounting systems), and skills of the Contractor to fulfill the requirements under the Agreement and within the time required by the County. This would include sufficiency of financial resources to perform as required under the Agreement.
- The integrity, reputation, and experience of the Contractor and its key personnel. This would include performance on previous Agreements or contracts with the County or other parties. Any debarment by the County or other entity must be noted.
- Previous and existing compliance by the Contractor with applicable laws, regulations, and ordinances.

The draft final AP also requires that the Agreement provide a clear and comprehensive description of the work to be conducted, and, where applicable, include goals, performance measures, deliverables, and a schedule of milestones. If an Agreement is for the provision of goods or services, then the draft final AP requires that the Agreement specify what the deliverables are, and when they are due. OMB review is also required for draft Agreements involving the payment of County funds.

We believe the issuance of the final AP 2-4 will address this recommendation.

**Finding 2: County officials relied, at least in part, on information provided by members of a criminal conspirators in vetting FMS and this program, and continued to rely on vendor (FMS/BusPatrol) supplied information when considering the future of the program.**

**Recommendation 2** - To protect the interests of the County, when adverse information becomes known about a vendor, contract, or program with which the County is associated, a comprehensive due diligence reassessment should be undertaken, independently of the Department or Agency involved. Those findings and recommendation should be documented.

**CAO Response:** We concur with this recommendation. When adverse information becomes known about a contractor with which the County has a contractual relationship (e.g., Agreement), we will ensure that an appropriate assessment of the facts is conducted, independently of the department/office involved. Those findings will be documented, as well as the recommendations for appropriate action.

Edward L. Blansitt, Inspector General  
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**Other Matters for Consideration**

**a. Interception and recording of oral communications under Maryland law**

We understand that MCPS will be providing a separate response, as appropriate, on this matter.

**b. Montgomery County Interim Administrative Procedure 2-4**

We believe the issuance of the final AP 2-4 will ensure that County interests are protected in the future, but look forward to further discussions with the IG about any remaining concerns they have that may not be addressed by the final AP.

Thank you again for the opportunity to respond to the Draft's recommendations. If you have questions, please contact Fariba Kassiri, Deputy Chief Administrative Officer, at 240-777-2512 or [Fariba.Kassiri@montgomerycountymd.gov](mailto:Fariba.Kassiri@montgomerycountymd.gov).

cc: Fariba Kassiri, Deputy Chief Administrative Officer  
Andrew Zuckerman, Chief Operating Officer, Montgomery County Public Schools  
Marcus Jones, Acting Police Chief, Montgomery County Police  
Bill Broglie, Internal Audit Manager

## MCPS Chief Operating Officer's Response



**MONTGOMERY COUNTY PUBLIC SCHOOLS**  
MARYLAND  
www.montgomeryschoolsmd.org

July 19, 2019



Mr. Edward L. Blansitt III  
Inspector General  
Office of the Inspector General  
51 Monroe Street, Suite 802  
Rockville, Maryland 20850

Dear Mr. Blansitt:

For many years, Montgomery County Public Schools (MCPS) has been a committed partner with the Montgomery County Police Department (MCPD) and Montgomery County (the County) through the School Bus Camera Safety Enforcement Program, an innovative collaboration to install and maintain enforcement cameras on the stop arms of MCPS school buses to enhance traffic enforcement and thereby increase pedestrian safety. This program has yielded the added benefit of installing and maintaining additional state-of-the-art security cameras on the exterior and interior of MCPS school buses in a fiscally responsible manner to further benefit student, staff, and community safety. From the outset, MCPS and MCPD have worked to ensure that key stakeholders—such as the Board of Education, the County Council, and other County agencies—have been engaged and regularly updated regarding the implementation and impact of the School Bus Camera Safety Enforcement Program.

MCPS understands the importance of close scrutiny of the School Bus Camera Safety Enforcement Program, especially in light of the federal criminal investigations of the operation of a similar program in Texas. To that end, we appreciate that you found “no information suggesting that any County or MCPS employee violated a rule, law, or procedure, had any inappropriate relationship with the vendor or that the County, MCPD, or MCPS is connected to any of the events in Texas.” We understand that your inquiry was based, as you noted, “on reports about the conviction of the FMS Chief Executive Officer (CEO) of federal crimes involving fraud and bribery of public officials in Texas regarding the operation of a school bus safety camera program.” Because we recognize the importance of public review of our local School Bus Camera Safety Enforcement Program given what occurred in the Texas case, MCPS and the MCPD briefed key stakeholders regarding these developments more than a year ago and well before your review commenced.

We also understand the Inspector General's review of the program focused on the acquisition and implementation of the School Bus Camera Safety Enforcement Program. Your report suggests that the “business case for this program was built around the desired use of a predetermined vendor rather than an objective analysis to design an effective and economical method to achieve an identified outcome.” However, in doing so you have disregarded the extensive due diligence conducted by MCPS and MCPD in searching for a cost-effective solution to enhance and expand the School Bus Camera Safety Enforcement Program. The due diligence can be accessed [HERE](#), and includes review of other bus camera systems, comparison of due diligence questions, site visits, and a needs assessment.

**Office of the Chief Operating Officer**

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850 Hungerford Drive, Room 149 ♦ Rockville, Maryland 20850 ♦ 240-740-3050

Mr. Edward L. Blansitt III

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July 19, 2019

Your report also highlights the assertion that the School Bus Camera Safety Enforcement Program comes at no cost to the County, but that assertion needs to be understood in the context in which it was raised. It referred to the fact that no funding from the operating budget of MCPS or the County is paid to the vendor for the installation and maintenance of the cameras systems. MCPS and MCPD explained from the outset that MCPS and County employees would need to devote time and effort to supporting the comprehensive video and automated enforcement program. These County resources remain necessary because, regardless of the enforcement system utilized, MCPD staff members are required to conduct an independent review of all camera information to make the final determination as to whether a ticket is to be issued.

Moving forward, you noted in your report that “it remains unclear whether MCG or MCPS will receive any citation revenue in the future”; however, the agreement with the vendor established a process for the parties to negotiate a revenue sharing plan after the vendor recovers its initial total cost of investment. Currently, as a part of that process, MCPS, the County, and the vendor are engaged in an audit to review the current total cost of investment in order to identify the specific date by which revenue sharing can commence. As anticipated, this is part of the ongoing negotiations process with the vendor as the School Bus Camera Safety Enforcement Program expands.

From the MCPS perspective, the School Bus Camera Safety Enforcement Program is critical to pedestrian safety and, equally important, to MCPS transportation operations. In addition to the clear benefits to traffic enforcement—in which only 5.8% of all citations issued were repeat offenders—the camera monitoring capabilities and the ability to equip the entire bus fleet are critical to ensure student safety while riding MCPS buses. In a notable oversight, your report entirely overlooks these benefits to student safety, which we previously have highlighted in the information that we provided to you and your staff. For example, the August 2018 arrest of MCPS bus operator Etienne K. Kabongo on charges of second-degree rape, sexual abuse of a minor, and third-degree sexual offense illustrates the need for this system. The interior bus footage on buses equipped with this equipment not only documented the initial allegations but identified additional victims. MCPS has committed to its larger community to increase school bus camera monitoring and equipment, and at this time, the increase and expansion of bus camera monitoring and equipment is made possible because of the beneficial structure of the agreement in place for the School Bus Camera Safety Enforcement Program. In the absence of such an agreement, school bus camera monitoring and equipment would otherwise require a significant outlay of tax funds to accomplish independently.<sup>1</sup>

Ultimately, we agree with you that the “County should exercise good stewardship of [taxpayer] funds and ensure that purchases are reasonable and necessary, and the best products and services are received for the best price.” That is why MCPS, in close collaboration with MCPD, entered into a well-defined

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<sup>1</sup> Notwithstanding the concerns raised in your report, MCPS sees no need to seek an opinion from Maryland’s Attorney General regarding the legality of audio surveillance on school buses. As you note, the Attorney General’s office reviewed this precise issue in a 2005 memorandum and expressed no legal concerns. Consistent with the Attorney General’s advice, MCPS informs staff and students of the possibility of recording on MCPS school buses. The Court of Appeals opinion cited in your report dealt with different issues and, thus, is distinguishable.

Mr. Edward L. Blansitt III

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July 19, 2019

agreement after extensive due diligence to enhance and expand its School Bus Camera Safety Enforcement Program. In addition, the County and MCPS developed a Memorandum of Understanding (MOU) to define their respective roles in the School Bus Camera Safety Enforcement Program—an MOU that the Inspector General has determined complies with Montgomery County Administrative Procedure 2-4, Agreements between Montgomery County Government and Other Organizations.

By September 1, 2019, it is anticipated that all 1,378 MCPS school buses will be installed with the fully operational safety system, thereby providing the students and pedestrians of Montgomery County with more enhanced levels of safety than ever before. Without this agreement and MOU, there was no reasonable way, given budget constraints, to outfit the large fleet of MCPS school buses in the time frame, with significant benefits to student and community safety.

Sincerely,



Andrew M. Zuckerman  
Chief Operating Officer

AMZ:bls

Copy to:  
Members of the Board of Education  
Dr. Smith  
Ms. Webb

If you are aware of fraud or misconduct  
in County government activities,  
contact the County Inspector General



☎ Confidential OIG Hotline: 240 777 7644

✉ [ig@montgomerycountymd.gov](mailto:ig@montgomerycountymd.gov)

Edward L. Blansitt III  
Inspector General

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