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Office of Inspector General
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Synopsis of OIG Final Report #101384-106 (DOT)

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

08/16/2010

Attached please find a synopsis of the Office of the Inspector General's (OIG) Final Report concerning contractor oversight within the Baltimore City Department of Transportation (DOT). The OIG's review determined that contractor management and oversight practices should be reviewed and adjusted as they pertain to maintaining records of time and attendance, accuracy of timekeeping entries for contractors, and separation of roles within the timekeeping system.

The OIG cautions that this review stemmed from allegations concerning an individual set of circumstances and personnel and should not be considered as reflective of the DOT as a whole. The OIG's role is to establish facts and assess the effectiveness of both City policy and the application of that policy. The report is also intended to serve as solid foundation for affected departments and agencies to take additional action as they deem necessary. Lastly, the report concludes with policy recommendations designed to help prevent future occurrences.

The OIG appreciates the assistance provided during the investigation and for the written responses to the report provided by the Department of Transportation and the Department of Human Resources. Both of which are included, with redactions, as addendums to this synopsis.

The OIG remains committed to providing independent investigations and audits that provide for transparency of government, a solid foundation for meaningful policy review, and a platform for staff accountability.

Attachment

DNM/

cc: OIG Admin/Case file
I:/mcclintock/public synopsis'/IG 101384-106 mem-council

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OFFICE OF THE INSPECTOR GENERAL BALTIMORE CITY

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Synopsis of OIG Report #IG 101384-106: Department of Transportation Contractor Management

On 04/13/2010, the Office of Inspector General (hereinafter “OIG”) received a voluntary written statement from a Department of Transportation (hereinafter “DOT”) employee who believed that there may be improprieties concerning the management and pay of a DOT contractor. The information, learned from a variety of sources, including an off-hour phone call from a supervisor, involved allegations that a contractor was being requested to work on personal computers while on extended leave and was possibly being provided overtime compensation in exchange for the work. There were also allegations concerning the general work conditions of the contractor to include a “flexible” schedule in comparison to others, the ability to work from home, not notifying Timekeepers of pay status, and the failure to sign in on a daily basis.

Contract and Pay Issues

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

- The contract was initiated for a period of one year at the rate of \$33.82 per hour for 7.33 hours per day, Monday - Friday, for a total of 1833 hours.
- The contractor would work “under the supervision of the DOT Division Chief.”
- The contractor’s duties included providing a variety of technical support functions, coaching, research, serving as point of contact for vendors, managing internal software issues, setting up new users, etc.
- The Agreement specifically stated that the contractor is “not entitled to receive any additional sick leave, compensatory time, personal leave, health insurance, or any other City benefit, except Workers’ Compensation coverage.”

A review of payroll records, E-Time sheets, and attendance logs was conducted with the following points/issues being identified:

1. Payroll records reflect that the contractor was paid a net sum of \$1984.23 for the pay period spanning 06/25/2009 through 07/08/2009. However, a review of the E-Time sheet for this period reflects that the contractor’s first recorded workday was not until 07/09/2009, the day after the pay period in question.
 - a) Indicating why the discrepancy may have existed is an email dated Tuesday, 07/14/2009, from DOT HR was located authorizing a paycheck to be issued because the contractor was not showing up in the payroll system. The electronic message entitled “request for assistance” inquires of Department of Finance: “What can we do to ensure he receives a paycheck on Friday?”
 - b) However, the mechanism that is normally used to verify attendance would be the standard Sign-In Sheet used Citywide; however, the contractor was not required to maintain Sign-

In Sheets until 04/15/2010, some 10 months later.

- c) Further indication that the contractor was present during the period was located during a review of the contractor's computer files indicates that there were certain files modified on 06/26/2009, indicating that there was activity on his system during the period in question.
2. Although the contractor indicated that he did not work between 01/08/2010 and 03/01/2010 his E-Time sheet reflects he was paid for four hours per day on 02/05, 02/09, and 02/10/2010. His payroll reflects he was paid a total of \$405.84 for this time.
 - a) An email forwarded to the contractor on 02/05/2010 from a DOT Division Chief seems to be advising him of an issue but does not direct any specific actions.
 - b) A review of the contractor's computer files does reveal two modified files 10 minutes apart on 02/09/2010 and six modified files over a 30-minute span on 02/10/2010.
 - c) The contractor's electronic calendar reveals entries indicating "Worked" on the relevant day, as well as on 02/17/2010 but does not include any specific time detail.
 3. The summary section of the contractor's E-Time report also indicates in that he was paid six hours of overtime @ 1.5 which would not be authorized under the contract in question which limits compensation to \$33.82 per hour. Interestingly, a review of the E-Time report's daily entry section (which is the data source for the summary section) did not reflect the overtime in question. However, a review of payroll records does reflect pay in the amount of \$304.38 on 06/18/2010 for six hours at the overtime rate of \$50.73 per hour. This pay exceeded that authorized by \$16.91 per hour. This discrepancy is troubling because the automated payroll system should prevent a summary field total that is not also reflected in the daily entries.
 4. In the area of compensatory time, the contractor's E-Time report also reflects discrepancies between the summary field and the daily entries. The summary field indicates he received three hours of Compensatory Straight Time over the course of the contract period. However, a review of the daily entries reveals a total of nine hours earned (three hours on 04/23/2010 and six hours on 05/15/2010). Again, it was noted that the automated payroll system should prevent a summary field total that is not supported by the daily entries. Further, the six hours on 5/15/2010 initially recorded as Compensatory Time Earned at Straight were then edited to Overtime at 1.5, as directed by Payroll.
 - a) Additionally, the earning of compensatory time is specifically prohibited under both the relevant contract and Administrative Manual Policy 212-1, Part II.¹
 5. The contract approved by the Board of Estimates authorized the funds to be drawn from account number #2076-000000-2350-2562-00-601009. Payroll and E-Time documents indicate that funds were also drawn from #3001-000000-2300-2487-00-601009 and 2076-000000-2350-2562-00-601005. Funds and purpose are as follows:

1 AM 212-1, Part II, Contractual Agreements Other than Retired City Employees: Under the Disallowed Benefits section: "Contractual individuals do not receive health benefits, paid holidays, death benefits, vacation leave, personal leave, sick leave benefits, compensatory time, death benefits, or new or additional retirement benefits. Lunch hours are not included as paid hours of work. Individuals under contract with the City are not represented by an employee union or professional association. However, a contractual worker is covered by the provisions of the Maryland Workers' Compensation Act."

- a) #2076-000000-2350-2562-00-601009: This DOT account is the source authorized and is designated as Parking Management/Parking Enforcement/Contract Salaries. This fund code was used from pay ending date 12/09/2009 through the end of the contract on 06/24/2010 and resulted in compensation in the amount of \$24,643.09.
 - b) #3001-000000-2300-2487-00-601009: This DOT account is designated as Administration/Motor Vehicle/Contract Salaries. This fund code was used from pay ending date 07/08/2009 through the end of the contract on 12/09/2009 and resulted in compensation in the amount of \$25,545.09.
 - c) #2076-000000-2350-2562-00-601005: This DOT account is designated as Parking Management/Parking Enforcement/Overtime Salaries/Wages. This fund code was used to compensate the contractor on two occasions. The first, for eight hours of “overtime @ straight” on 12/18/2009 totaling \$270.56. The second, for six hours of “overtime @ 1.5 on 06/18/2010 totaling \$304.38. The combined total payments from this account code were \$574.94.
6. Sign-In Sheets obtained from the DOT Timekeeper reflects that the contractor worked for six hours on Saturday, 05/15/2010, despite the contract approved by the Board of Estimates stating that the contractor may work 7.33 hours per day, Monday through Friday.
7. A review of the contractor’s Sign-In Sheets, which were only initiated on Thursday, 04/15/2010, reflect a failure to routinely and accurately document his time. Since that date the Sign-In Sheets reflect 11 separate occasions where the required information such as signature and/or departure time were not recorded.

Contractor - Computer Use

During the course of routine investigation, the case agent took certain actions to query the Baltimore City computer system used by the contractor. During a review of computer files and incidental to this investigation, four pornographic/sexually suggestive images and forty images of various women that do not appear to be related to any legitimate work assignment were located on the contractor’s workstation.

Division Chief – Employee Telephone Contact/Contractor Computer Repair

According to the DOT employee’s statement, a Division Chief made several statements during an off-hour telephone call on 02/10/2010 to that employee that could be significant in assessing if the 12 hours of pay requested for the contractor was related to work on personal computers. During interviews, a DOT Division Chief did recall placing a telephone call to a DOT employee around the approximate time in question but noted that they both had just completed a late shift relating to snow removal and that the call was business-related. It was further stated that there were no statements made regarding the contractor. Further, a review of email traffic during that period also did not indicate any communication concerning personal computer issues. A review of available phone records determined that there were not any phone calls placed to the contractor by the Division Chief during the times in question. Lastly, the contractor denied ever having been asked or ever performing any repairs to the personal computer equipment of the Division Chief.

Based on the aforementioned facts, the OIG was not able to demonstrate through available data sources that any communications occurred during the relevant times between the Division Chief and the contractor that would indicate actions consistent with the statements reported. However, it should be noted that the contractor's overtime pay requested by the Division Chief for 02/10/2010 is not well supported. In addition, during an interview on 04/15/2010, the contractor himself indicated he did not work during that period of time. Oddly, this statement itself seems to be in conflict with some limited computer records located on the contractor's computer.

FINDINGS AND VIOLATIONS

The OIG views the processes and procedures management uses to accurately record employee/contractor time, attendance, and work product as the foundation of effective auditing. The absence of efficient checks and balances often creates an environment conducive to fraud and must remain a prominent component of routine operations.

Findings: Division Chief

- 1) City-issued telephone records of the Division Chief confirm a phone call made with a duration of 11 minutes, beginning at 12:30 am on 02/10/2010 to a DOT employee.
 - a) The DOT employee took steps to notify others about the phone call and the alleged nature of the call within a few days of its occurrence.
 - b) The Division Chief indicated that he did recall a telephone call to the DOT employee around the approximate time in question but that they had just completed a late shift relating to snow removal and that the call was business-related. It was further indicated that there were no statements made concerning the contractor.
 - c) E-Time and payroll records do reflect that the contractor was authorized for "overtime" during this period as described in detail in other portions of this report.
- 2) The electronic message, authored by the Division Chief, dated 02/16/2010 to a DOT Timekeeper, authorizes the payroll clerk to approve the contractor for work performed outside of normal work hours on 02/05, 02/09, and 02/10/2010.
 - a) It is important to recall that in this case the term "overtime" did not result in a higher rate of compensation. In relation to the days relevant to this finding, it resulted in 12 hours of pay at the contractor's regular rate and not the elevated rate of time and a half typically considered as overtime.
 - b) It was determined that no Sign-In Sheets were required of the contractor prior to Thursday, 04/15/2010, which coincides with this OIG inquiry.
 - c) There were some entries containing only "Worked" in the contractor's electronic calendar, an advisory email from the Division Chief to the contractor on 02/05/2010, and some limited computer activity encompassing forty minutes on 02/09-02/10/2010 indicating that the contractor may have worked.
- 3) There is no evidence to indicate that the Division Chief directed the contractor to sign in or record his time for approximately the first 10 months of his contract.

Violations: Division Chief

When considering the Division Chief's management and oversight of this contractor, the OIG recognizes that both City-wide policy and Departmental policy may be relevant and that DOT may consider the aforementioned findings as performance or disciplinary in nature. The OIG assesses violations only as they pertain to City-wide policy and defers to the Department to assess whether the violation supports action based on internal protocol.

Baltimore City Department of Personnel and the Baltimore City Civil Service Commission - Rule 56, Part (2) sets forth various situations that are recognized as constituting "*just and sufficient cause for suspension, demotion, or discharge.*" Sub-part (b) sets forth one of the recognized areas as: "*The employee is incompetent, inefficient, or negligent in the performance of duty.*"

During the course of the contractor's tenure, the Division Chief failed to provide reasonable oversight mechanisms to ensure both adherence to the requirements of the contract approved by the Board of Estimates and to adequately document the hours and/or work provided by the contractor, demonstrated as follows:

- There was no effective effort to ensure that the contractor documented the hours he worked between 06/26/2009 and 04/15/2010 which has resulted in the lack of sufficient audit trails needed to verify the work provided.
- The contractor began recording his attendance on 04/15/2010 when he was interviewed by the OIG. Even after this period there was no effective effort to ensure compliance as evidenced on 11 different occasions where the daily record is incomplete.
- During this period the contractor was permitted to be paid six hours of overtime @ 1.5 on 06/18/2010 in violation of the contract requirements.
- During this period, on 02/16/2010, the Division Chief directed the DOT Timekeeper to authorize the Payroll Clerk to approve the contractor for work performed outside of normal work hours on 02/05, 02/09, and 02/10/2010. What work was done during what period of time is not well supported through demonstrable records of the nature required for reasonable accountability.
- The contract approved by the Board of Estimates authorized funds to be drawn from account number #2076-000000-2350-2562-00-601009. Payroll and E-Time documents indicate that funds were also drawn from #3001-000000-2300-2487-00-601009 and 2076-000000-2350-2562-00-601005.

Findings: Contractor

- 1) Investigation revealed that the Board of Estimates granted the contractor an Employment Contract Agreement for a period of one year at the rate of \$33.82 per hour for 7.33 hours per day, Monday through Friday, for a total of 1833 hours, not to exceed \$62,000.00 during the term of this Agreement.
- 2) Payroll records reflect that the contractor was paid a net sum of \$1984.23 for the pay period ending on 07/08/2009. However, a review of the E-Time sheet for this period reflects the contractor's first recorded workday was not until 07/09/2009, the day after the pay period in

question.

- a) The pay was the result of a request specifically made by DOT HR, authorizing a paycheck to be issued to the contractor because he was not appearing in the PAYROLL System.
 - b) No Sign-In Sheets could be located to verify his attendance.
 - c) A review of the contractor's computer files indicates that there were certain files modified on 06/26/2009 indicating that there was activity on his system during the period in question.
- 3) Although the contractor indicated that he did not work at all between 01/08/2010 and 03/01/2010, his E-Time sheet reflects he was paid for four hours per day on 02/05, 02/09, and 02/10/2010. His payroll reflects he was paid a total of \$405.84 for this time.
- i) An email forwarded to the contractor on 02/05/2010 from the Division Chief seems to be advising him of an issue but does not direct any specific actions.
 - ii) A review of the contractor's computer files indicates that he modified two files 10 minutes apart on 02/09/2010 and modified six files over a 30-minute span on 02/10/2010.
- 4) The contractor denied ever having been called by the Division Chief during February of 2010 and that he was ever asked to work on personal computer equipment.
- 5) The contractor was paid six hours of overtime @ 1.5 times his rate of pay, in violation of his contract, which limits compensation to \$33.82 per hour.
- a) Although the overtime was reflected in the E-Time summary, it was not reflected in the E-Time report daily entry section (which is the data source for the summary section).
 - b) Payroll records confirm pay in the amount of \$304.38 on 06/18/2010 for six hours at the overtime rate of \$50.73 per hour. This pay exceeded that authorized by \$16.91 per hour.
- 6) The contractor reported six hours worked on Saturday, 05/15/2010, which would exceed his normal 73.33 contractual hours. This was also outside the scope of the contract which authorizes Monday – Friday.
- 7) The contractor's E-Time summary field indicates three hours of Compensatory Straight Time over the course of the contract period. However, a review of the daily entries reveals a total of nine hours earned (three hours on 04/23/2010 and six hours on 05/15/2010). The earning of compensatory time is specifically prohibited under both the contract and Administrative Manual Policy 212-1, Part II.²
- 8) Four pornographic or sexually suggestive images and forty images of various women that do

² AM 212-1, Part II, Contractual Agreements Other than Retired City Employees: Under the Disallowed Benefits section: "Contractual individuals do not receive health benefits, paid holidays, death benefits, vacation leave, personal leave, sick leave benefits, compensatory time, death benefits, or new or additional retirement benefits. Lunch hours are not included as paid hours of work. Individuals under contract with the City are not represented by an employee union or professional association. However, a contractual worker is covered by the provisions of the Maryland Workers' Compensation Act."

not appear to be related to any legitimate work assignment were located on the contractor's Baltimore City computer account.

- 9) Sign-In Sheets obtained by OIG from the DOT Timekeeper reflect the contractor worked for six hours on Saturday, 05/15/2010, in violation of the contract which authorizes, in relevant part, to work 7.33 hours per day, Monday-Friday.

Violations: Contractor

A contractor is responsible for performing within the terms of the agreement. Satisfactory performance necessarily would include following directions designed to ensure proper accountability and to not utilize City property for personal use. Further, a contractor is "at will" and may be discharged at any time with 10 days notice.

The following conduct should be considered by the Department of Transportation as it pertains to a continued contractual relationship with the contractor and/or terms of that relationship:

- During the course of the contractor's term, City computers were used to access and save four (4) pornographic or sexually suggestive images and forty (40) images of various women that do not appear to be related to any legitimate work assignment.
- The contractor did not maintain a log of the hours he worked for DOT, making complete, independent verification impossible from 06/26/2009 through 04/15/2010. Further, once a sign-in log was initiated on 04/15/2010, the record was not adequately completed on a regular basis. A review of the log revealed 11 different occasions when the daily record was incomplete.
- The contractor accepted 6 hours of compensation at the overtime 1.5 rate of \$50.73 per hour. This pay exceeded that authorized by \$16.91 per hour for a total of \$304.38.

FINDINGS: DEPARTMENT POLICY AND POLICY OBSERVANCE

Throughout the investigation the OIG frequently encountered timekeeping irregularities concerning the contractor's records. It is believed that the issues were, in large part, due to inadequate logs indicating when the contractor worked, but also indicate a lack of clarity regarding appropriate compensation and insufficient separation of approval authority within E-Time. The following issues are demonstrative:

- 1) E-Time records include daily entries that are not relevant to contract employees to include Leave without Pay (LWOP), excused and unexcused;³ Overtime Straight Time and Overtime @ 1.5, and Compensatory Time.
- 2) The contractor was compensated for 58.4 hours totaling \$1,984.23 for the pay period ending 7/8/09; however, there is no evidence in E-Time of the contractor working those 58.4 hours in that time period.⁴
- 3) In this particular case, it was determined that the DOT Timekeeper frequently served as both

3 A contractor is not entitled to many of the benefits of an employee and conversely is not required to meet some of the obligations of an employee. One such example is that of Leave without Pay (LWOP).

4 The OIG was able to determine through computer records that the contractor did work during the period in question; however, the specific times and duration were not able to be determined.

the Timekeeper and the Approving Manager within the E-Time system. Typically, these roles should be separated to enhance accountability and oversight.

- 4) The DOT Timekeeper indicates that she was not afforded a substitute or Approving Manager despite several requests. She was eventually instructed to provide her assigned password to other DOT Supervisors in the event they needed to serve those functions.

RECOMMENDATIONS

1. *The OIG recommends that the Department of Transportation Safety Division reevaluate the current system and process in place for the recordation and approval of employee and contractor time, as well as the implementation of a written manual or guidelines that clarify how time should be kept for all classes of workers.*
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The timekeeping component of any organization must include definitive tiers of review and approval. The practice of allowing one employee to serve in two different capacities eliminates a key level of verification and oversight. Additionally, procedure should prohibit the sharing of passwords under any situation as doing so defeats a primary mechanism designed to promote accountability.

The OIG strongly recommends a system requiring multiple tiers of verification and review. The first tier of the process should begin with the completion of time/attendance sheets by the employee that are then verified by the responsible supervisor. The second tier is the actual entry into E-time by the Timekeeper who ensures that employees and contractors are only compensated as authorized by contract or employee classification. The third tier involves the final review and concurrence by the Approving Manager who ideally has supervisory responsibility over the employees for whom the approval is being made.

2. *The OIG recommends that the Department of Human Resources and/or Department of Transportation consider the development of a written work-from-home policy.*
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The OIG review of this matter revealed that there is not currently a City-wide work-from-home policy. It was determined that a verbal policy does exist within the Department of Transportation that requires approval by the Department Head. The OIG believes that while work-from-home programs can be mutually beneficial for employee and employer alike, they also present accountability concerns not present when employees are on-site and merit specific policy outlining acceptable parameters.

The OIG recommends that the Department of Human Resources considers the development of a City-wide policy that addresses the appropriate approval level, the request and approval process, limits on scope and duration without re-approval, and the assessment of performance measurements as needed. In the interim, the Department of Transportation should implement an internal written policy addressing the same concerns.

3. *The OIG recommends that the Department of Human Resources and the Department of Law*

review the current process and resources available to the departments in developing employment contracts.

In reviewing the relevant employee contract, it was observed that no specific requirements existed to ensure contractor time and attendance record management or to specifically require adherence to the various policies that govern personal conduct in the workplace. Further, it was observed that while this specific contract limited compensation to a set rate, it did not specifically state that overtime was prohibited along with compensatory time, personal leave, etc.

While the “at will” nature of contractors is understood, the OIG believes that by clarifying certain expectations concerning accountability and conduct, it would be beneficial to the City, the contractor, those who manage contractors, and others that provide support services such as Timekeepers. Therefore, the OIG recommends the development of several templates that would allow for departments to readily adjust key components concerning time, hours, rates, duties, etc., while ensuring that other desired components are in place that may add value and make the legal review process more efficient.