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OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: David E. Dise, Director  
Office of Procurement

FROM: Karen L. Federman Henry *Karen L. Federman Henry*  
Chief, Division of Finance and Procurement

DATE: April 9, 2008

RE: Advice of counsel—authority to change contract administrator

During recent months, an issue has arisen involving the activities of a contract administrator. The nature of the contract administrator's actions has created concern regarding the handling of the contract within the person's responsibility. Ordinarily, the assignment of a contract administrator is left to the discretion of the Using Department. In this instance, the severity of the situation has led you to request an opinion from this Office as to the authority to replace a contract administrator.

**Short Answer**

Based upon the Montgomery County Code and the Procurement Regulations, the Director of Procurement has the authority to require a Using Department to replace a contract administrator.

**Discussion**

The County Code sets up the framework for the procurement process in Montgomery County and designates the Chief Administrative Officer as holding the overall power and responsibility for the procurement of goods and services for the County. Montg. Co. Code § 11B-5 (2004). Under the supervision of the CAO, the Director of the Office of Procurement serves as the central procurement officer. Montg. Co. Code § 11B-6. These roles are clarified in the Procurement Regulations, through which the CAO delegates his procurement authority to the Director of the Office of Procurement:

David E. Dise, Director  
April 9, 2008  
Page 2

#### 1.4 Procurement Authority; Delegation of Authority

1.4.1 Authority to acquire goods, services, and construction is vested in the CAO and, by these regulations, is delegated, subject to revision by the CAO, to the Director. These contracting officers, and only these contracting officers, may delegate, or redelegate, in writing, this authority, subject to limits stated in the delegation. Contracts may be executed on behalf of the County by these contracting officers only, except as otherwise provided in these regulations.

Montg. Co. Proc. Regs. § 1.4.1. The regulations further define "contracting officer" to include only the CAO and the Director of Procurement, unless other delegations by either of these two individuals are made:

2.4.24 Contracting Officer: The CAO, Director, others delegated by these officials to act within their authority, and other officials specifically authorized by these regulations to enter into a contract on behalf of the County. Only contracting officers may execute contracts or contract modifications on behalf of the County.

Montg. Co. Proc. Regs. § 2.4.24.

Although the Using Department handles the day-to-day review of the contractor's performance and approves invoices for payment, no modifications to a contract can be made without the approval of the Director of the Office of Procurement. Montg. Co. Proc. Regs. §§ 5.1 et seq. and § 11.1.

Based on the combined effect of these provisions, the CAO and the Director of the Office of Procurement retain the ability to approve or to require a change in the contract administrator. Both the CAO and the Director serve as the contracting officer for the County. To the extent that either of these individuals delegates contracting authority, the delegation may be revoked in their discretion.

### **Conclusion**

Consistent with the provisions noted in this memorandum, you have the authority and the responsibility as a contracting officer for the County to ensure that the procurement law and regulations are satisfied. To do so includes approving or disapproving contracts and modifications and, of necessity, includes the ability to instruct a Using Department that a contract administrator is not meeting the requirements of the law and regulations.

If you have additional questions or concerns, please do not hesitate to contact me.

David E. Dise, Director  
April 9, 2008  
Page 3

cc: Leon Rodriguez, County Attorney  
Marc P. Hansen, Deputy County Attorney