Special Report on the Nassau County Contracting Process

July 2015
Table of Contents

Executive Summary ........................................................................................................................................ 1

Preliminary Statement ................................................................................................................................ 6

I. Procurement ........................................................................................................................................ 7

II. Past Procurement Systems Failures ........................................................................................................ 9
      1. Unsolicited Proposal to Solve a Non-Existent Problem .............................................................. 9
      2. The Proposed Solution is Prohibited by State Law but Moves Forward .................................. 11
      3. Fraudulent BPA Contract Costs Taxpayers Approximately $80 Million .................................. 12
   B. AbTech Procurement Scandal (2012-2015) ..................................................................................... 13
      1. Unsolicited Proposal Leads to RFP for Stormwater Filtration .................................................... 13
      2. State Law Poses a Barrier to AbTech Contract .......................................................................... 14
      3. Contract Halted Following Allegations in Federal Complaint .................................................. 14
   C. Scandal Similarities Illustrate Systemic Failures ............................................................................ 15

III. Previous Reform Attempts .................................................................................................................. 16
   A. Nassau Interim Finance Authority (NIFA) (2000 - 2015) ................................................................. 16
      1. The Authority’s Legal Basis and Responsibilities ....................................................................... 16
      2. The Authority’s Effect on Contracting and Procurement ........................................................... 17
   B. Reforms Under County Executive Thomas Suozzi (2004 - 2009) .................................................. 18
      1. Administrative Reforms .................................................................................................................. 18
      2. Ramifications for Modern Procurement Policies ........................................................................ 19
   C. New York State Comptroller Audit (2012-2013) ............................................................................. 21
      1. Audit Recommendations ............................................................................................................... 21
      2. Ramifications for Modern Procurement Policies ........................................................................ 22

IV. System Vulnerabilities .......................................................................................................................... 24
   A. Decentralization Increases Corruption Vulnerability ..................................................................... 24
   B. Outdated Technology and a Diffuse Paper-Based System ............................................................... 26
   C. Inadequate Screening of Vendors .................................................................................................... 29
   D. Ineffective Screening of Government Employee Conflicts ............................................................ 29

V. Recommendations for Reform ............................................................................................................. 32

VI. Ongoing Investigation .......................................................................................................................... 34
Executive Summary

The Nassau County District Attorney is conducting a comprehensive review of Nassau County’s contracting process to identify systemic vulnerabilities to corruption, fraud, and abuse. While the review of individual contracts is a long-term and resource-intensive undertaking, this process report details serious systemic deficiencies that require the immediate attention of the County Executive and Legislature to protect taxpayers and prevent future scandal.

The Historic Problem of Unsolicited Proposals

Although recent attention has focused on Nassau County’s contract with AbTech, which began as an unsolicited proposal, allegedly pushed through the approval process by influential advocates including former Senate Majority Leader Dean Skelos and his son, Adam, AbTech is not the first instance of an unsolicited proposal leading to scandal.

Nassau’s porous contracting process is the product of no one administration or political party, but instead the result of years of neglect, ineffectual, surface-level reforms, and a regrettable failure to learn from past failings.

In 1995, influential former Suffolk County Republican chairman, Mike Blake, crafted a plan to remove a portion of Nassau’s retiree health insurance business from a low-cost statewide plan to a self-insurance program administered by a small local firm, BPA. Blake approached county leaders—his longtime political allies—with an unsolicited proposal. The pitch made unrealistic guarantees of savings, and without further inquiry, county leaders promptly issued an RFP. Though state law posed an impediment, influential advocates prevailed upon county leaders to move forward nonetheless. A promised $150,000 bribe sweetened the pot for one Deputy County Executive. Nassau County did not need private insurance for its employees, and any independent analysis would have immediately made clear that the County should not have issued the RFP following receipt of an unsolicited proposal. However, the County’s contracting process failed, and this misadventure at the behest of unscrupulous and politically-connected hucksters cost the taxpayers about $80 million. Ultimately, nine were convicted in the conspiracy.

The parallels of the AbTech contracting process to the BPA scandal are striking. Both began as unsolicited solutions to problems the County did not have. Both were championed by politically-connected advocates; neither registered as lobbyists. Both proposals moved expeditiously from unsolicited proposal, to RFP, to contract, despite obstacles posed by state law. And both wasted taxpayer dollars.
Past Reform Efforts Abandoned

Past efforts at reform have not gone far enough, and well-intended safeguards to protect against corruption have been short-lived. Former County Executive Thomas Suozzi spearheaded the creation of a Countywide Procurement Policy and Procedure Manual, released in 2004. He appointed a Deputy County Executive for Compliance to oversee and enforce the policy. Suozzi also appointed a Commissioner of Investigations, as provided for by the County Charter, to provide an additional layer of oversight.

The Mangano administration eliminated the position of Deputy County Executive for Compliance and substantially eliminated the distinct role of Commissioner of Investigations. What remains is an antiquated, slow, and inefficient contract approval process that is heavy on bureaucratic file-passing, and light on substantive scrutiny and fact-checking. The elimination of the distinct office of the Commissioner of Investigations was intended to be a cost-saving measure, but a vulnerable and porous contracting process exposes taxpayers to the much higher cost of corruption.

An Archaic and Slow Process with Woefully Inadequate Checks

This review found that the approval process is so slow that many Nassau County departments (including, at times, the District Attorney’s office) allow contractors to begin work before contracts are finally approved, simply to prevent county business from grinding to a halt. However, the onerous 24-step contract approval process neglects critical safeguards to prevent corruption.

In fact, our review found that critical information essential to ascertaining the credibility and viability of a potential contractor is never collected or verified. The contrast with New York City’s more robust contractor vetting process is stark, as illustrated below.
## VENDOR DISCLOSURE REQUIREMENTS: NYC vs. NASSAU

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* Required by Nassau County Executive Order issued May 15, 2015.

**Nassau requires only disclosure of subsidiaries and affiliates that will participate in the contract.

Nassau County’s contracting process is a diffuse, paper-based system, with critical components of contract files scattered between agencies. Without a comprehensive, central contract and vendor database, this system is nearly impossible to thoroughly audit or review. Modern data analytics platforms used by investigators to identify fraud, self-dealing, bid-rigging, debarment in other jurisdictions, and pay-to-play, among other things, depends upon clean data sets that are accessible across platforms. Such systems are simply incompatible with Nassau’s antiquated paper files.

Compounding the challenges facing any effort at comprehensive review and oversight, financial disclosures required of County employees are completed by hand and collected on paper, detailing public officials’ prior calendar year’s financial interests. Without a central database of conflict information, those seeking to identify even properly-disclosed interests and conflicts would need to manually compare every contract with each county official’s financial disclosure statement—an impossible and impractical task. Currently, this system serves little prophylactic value to prevent problematic contracts.
While reforms proposed by County Executive Mangano and the Legislature to facilitate better lobbyist disclosure are important and significant steps to improve Nassau’s contracting process, comprehensive reform is critical to protecting taxpayers from further victimization.

Recommendations

1. The County should enhance its vendor screening protocols by local law to mirror or exceed those required by New York City. Current vendor screening protocols rely on vendor self-disclosure of only the most basic information, and the county does not require vendors to disclose business-related criminal convictions, liens, tax warrants, jurisdictions in which the company is barred from government contracts, among other pertinent information.

2. The County should immediately take steps to develop and implement a technological platform for the comprehensive integrated tracking of contracts and vendors because the current, paper-based contracting system severely compromises oversight and cripples efforts to identify corruption.

3. The County should streamline and modernize the submission of financial disclosure, beyond the minimum standard set forth by the New York State General Municipal Law. This database should be integrated with the contract and vendor tracking system to automatically flag potential conflicts for manual review by the County Inspector General. The County’s paper-based financial disclosure system does not allow for the efficient, electronic cross-referencing between public officials’ disclosed relationships and potential county contractors, it has little utility in the detection and prevention of corruption.

4. The County should organize annual trainings with all departmental procurement officials, timed with the annual review of its procurement policies as required by General Municipal Law § 104-b(4), because of the decentralization of the procurement process, and what audits have shown to be troubling and costly variations in compliance between departments.

5. The County should comprehensively assess bottlenecks that cause crippling delays in the review process, and implement technological and staffing solutions to remedy them. Moreover, the County should ensure compliance with the NIFA statute, rules, and regulations.

6. Regardless of the dollar amount, unsolicited proposals should be cataloged for public inspection, and the County Legislature should review any instance of an unsolicited proposal leading to a contract that is ultimately awarded to the vendor who proposed it. Vulnerability to corrupt contracts stemming from unsolicited
proposals, and the susceptibility of the RFP process to manipulation, warrants additional scrutiny.

7. Contracts that fall just short of dollar thresholds that trigger additional scrutiny ($25,000 for legislative approval, and $50,000 for NIFA approval) should be subject to additional review by a new County Inspector General.

8. The Legislature should modify the County Charter to eliminate the position of Commissioner of Investigations due to its history of ineffectiveness, and replace it with an independent and adequately-staffed County Inspector General, appointed by the County Executive and confirmed by a supermajority of the County Legislature, to serve a four-year term, removable only for cause. The County Inspector General should be afforded broad investigative authority over executive departments and the procurement process, tasked with the comprehensive vetting of county contractors, and directed to refer possible criminal conduct to the appropriate agency for prosecution.

The NCDA recommends that the County Executive convene a team of experts to manage a comprehensive overhaul of the County’s contracting process. NCDA offers its assistance.

Continuing Investigation

The District Attorney’s office is continuing its comprehensive review of Nassau County contracts. Early findings show that a disproportionate number of contracts narrowly evade scrutiny by sliding in just below the threshold that triggers review ($25,000 in the case of legislative review, and $50,000 for NIFA review).

Troublingly, investigators have also uncovered contractors with potentially problematic backgrounds and work histories.1 One contractor has documented ties to a convicted big-rigger with admitted connections to organized crime; a multi-contract recipient has a long list of tax liens and warrants; at least one contractor has been debarred from government business in a neighboring jurisdiction due to integrity issues. Because of the vetting deficiencies in the current contracting system, potential integrity problems may go undetected. Equally problematic, deficiencies in procurement policies may permit even vendors with known integrity problems to contract with the county.

The systemic deficiencies, antiquated technology, and paucity of oversight continue to expose Nassau County taxpayers to significant risk of contracting fraud and corruption and call for immediate, comprehensive reform.

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1 The District Attorney’s office is legally barred from discussing any part of a grand jury investigation, including any evidence or materials compelled by grand jury subpoena.
Preliminary Statement

On April 16, 2015, Acting District Attorney Madeline Singas commissioned a comprehensive review of Nassau County’s contracting and procurement processes, aimed at determining whether, and to what extent, those processes were vulnerable to fraud, waste, and corruption. This effort follows in the tradition of District Attorneys addressing fraud against the government both reactively, by prosecuting public corruption offenses, and proactively, by deterring and developing defenses against such crimes.

The Nassau County District Attorney’s Office (“NCDA”) undertook this task knowing its gravity, and expecting that the review process, in order to be thorough, would be time-consuming, onerous, and entail significant and sustained devotion of resources. The NCDA acknowledges at the outset that it has already received significant cooperation from current and former staff members of the County Executive’s office, the County Comptroller, the County Attorney, the County Legislature, the New York State Comptroller, and various New York City departments in the early stages of this endeavor.

This document is intended to serve as a first-stage introductory review of the Nassau County procurement and contracting processes. As the systems under analysis are not static, it may be important, throughout this long-term process, to occasionally release significant findings, lest those very findings become outdated, or come too late to prevent further waste. It is equally important to thoroughly document prior work in this area. As will be demonstrated within, many aspects of the processes to be analyzed have been subjected to previous scrutiny.

Lastly, crime prevention strategy must complement, rather than come at the expense of, investigating and prosecuting violations of law. Accordingly, any suspected criminality uncovered during the course of the overarching inquiry will be channeled to prosecutors for appropriate action. Ultimately, the best possible result for Nassau County is the elimination of corruptive influence and the establishment of permanent safeguards to ensure the integrity of the County’s contracting process.
I. Procurement

In government operations, “procurement” is the process by which goods and services are selected for public use. With appropriate system architecture, procurement will reflect the public values of financial responsibility and the avoidance of waste. In personal or private sector shopping, competition, quality, value, and price are at the forefront of any purchase. It is critical that government officials, spending from a public treasury, exercise the same restraint. Because the collection of revenue and its expenditure for public purposes are basic functions of government, the integrity and prudence of a government’s operations are significantly defined by its procurement process.

Accordingly, New York State has passed a host of laws to ensure that state and local entities follow prudent business principles in their purchasing and contracting processes. These laws include regulations and monetary thresholds for formal sealed competitive bidding, requesting proposals for professional service contracts, intergovernmental procurement, preferred source procurement, sole source procurement, emergency procurement, and small purchasing, among a litany of others. Nassau County has likewise passed several local laws to rein in spending and encourage competition in its contracts for goods and services. The most important aspect of any procurement process is the maximization of competition. Opening up a government’s purchasing intentions to the full market is not only the best means of attaining fair market value for goods and services, but also reaps an ancillary benefit, as competition begets transparency. This can be a significant safeguard against patronage, favoritism, and corruption.

At the same time, competition can be vulnerable to manipulation. Ultimately, no system is above or beyond its human component, and skilled actors can often find a way to exclude unwanted competition or include undeserving competition. For example, personal service procurement (services provided by contractors with highly-specialized or technical skill sets) includes an inherently subjective “value” assessment, compounded by the equally subjective assessment of whether a service may or should be categorized as a personal service in the first place.

2 See, e.g., N.Y. GEN. MUN. L. §§ 99-h (Participation in Federal Programs), 99-r (Contracts for Services purchased from a state public benefit corporation or public authority), 101 (Wicks Law), 103 (Advertising for Bids), 103-a (Purchases through other Counties), 103-b (Cancellation of Contracts), 104 (Purchasing through NYS Office of General Services), 104-b (Procurement Policies and Procedures), 119-o (Intermunicipal Agreements), 800-813 (Conflicts of Interest); N.Y. LAB. L. § 220 (Hours, Wages and Supplements); N.Y. STATE FIN. L. § 161 (Preferred Sources).

3 See, e.g., Nassau County Charter §§ 103(8), 300-A, 402, 702, 703, 704, 1102, 1209, 2151, 2202, 2206, 2208, 2218; Nassau County Administrative Code §§ 7-1.0; 7-2.0, 7-3.0, 22-4, 22-4.2, 22-17; Miscellaneous Laws of Nassau County Title 56, Executive Order No. 1 of 1993; Executive Order Nos. 1 and 2 of 2015.

4 This can be deemed to include services requiring advanced education (e.g. law, medicine, and accounting) but can also include less clearly defined skills and occupations (e.g. consulting services).

5 Indeed, the technological development and specialization of labor has continued to grow dramatically over the past 30 years and will only be increasing further in years to come. This creates the quandary of whether all services in the near future will require “specialized skills,” thus bringing them within the ambit of personal service contracts and, accordingly, immunizing them from competitive sealed bidding.
assessment of a vendor’s capability to succeed on a publicly offered contract based upon its resources, qualifications, experience, and record), as only those deemed “responsible” are ultimately subject to selection. Yet another means of manipulation is the artful drafting of public solicitations, which should be broad enough to capture a large pool of prospective vendors from the open market, but can be intentionally crafted to engage a much narrower audience. Alternatively, with sufficient guile, the solicitation could be made specific enough that competition is avoided entirely through “sole source” provider principles. And these are just the games that can be played on the government side of the process.

Indeed, every human system has “discretion points,” and government procurement is no exception. It is therefore incumbent, in deterring waste and fraud, to recognize these weaknesses in the process and enact corresponding safeguards. Nassau County is not immune to corrupt practices in its procurement process. Therefore, this report begins by looking at past problems in procurement, highlighting two major instances of corruption from the last twenty years. After examining these system failures, we look at past solutions, measure their effectiveness, evaluate our current system, and recommend urgently needed reforms.

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6 A vendor can be awarded a contract for goods or services without any competitive process whatsoever if there is a “reasonable belief” that the vendor is the only supplier capable of delivering the good or service.
II. Past Procurement System Failures

A review of the past twenty years of Nassau County governance demonstrates that county procurement is susceptible to procurement manipulation, has indeed fallen victim to manipulation, and that this vulnerability to corruption has undermined and will continue to compromise Nassau’s finances unless and until significant reform is achieved. From the very inception of Nassau’s modern government structure, the County has been embroiled with procurement scandals and reactive politics. Unfortunately, some of the lessons which could have formed the basis of a preventative strategy have not yet been learned. It is necessary to understand these problems, and why they remain unsolved, before turning to what must be done to prevent similar losses in the future.


On April 14, 1993, United States District Judge Arthur D. Spatt held in Jackson v. Nassau County Board of Supervisors7 that Nassau County’s then-existing form of government was unconstitutional. Since 1937, Nassau County’s general legislative body had consisted of a Board of Supervisors, comprised of elected representatives from Nassau’s five major municipalities (Hempstead, North Hempstead, Oyster Bay, Glen Cove, and Long Beach). Its legislative authority had been exercised through a system of weighted voting that gave more power to board members from the more populous towns and cities. This system, Judge Spatt held, violated the “one person, one vote” principle of the United States Constitution. Over the next ten weeks, his court presided over a remediation plan for Nassau County government, culminating on June 30, 1993, in the issuance of an Order establishing guidelines and recommendations for an alternative governmental structure. This Order began the modern era of Nassau County government, but the transformation was not instantaneous. Indeed, the citizens of Nassau County would not vote on a transformative referendum until November 8, 1994, and the modern iteration of the Nassau County Legislature would not be finally established until January 1, 1996. In the interim, the County was in a particularly vulnerable state.

It is unsurprising, then, that the County’s first massive procurement scandal began in 1995. That scandal would consume tens of millions of dollars before it was done, and present the first significant challenge for the new County Legislature.

1. Unsolicited Proposal to Solve a Non-Existent Problem

Since 1960, Nassau County had provided health insurance coverage to its employees and retirees through the New York State Health Insurance Plan (“NYSHIP”), under what is commonly known as the “Empire Plan.” In 1995, approximately 27,000 County employees and

retirees were enrolled in NYSHIP. At that time, William M. Blake (better known as Mike Blake), then-owner of the William M. Blake Agency (“W MBA”), a Deer Park insurance brokerage, observed that NYSHIP was charging Nassau County the same amount of premiums for each retiree, regardless of whether they were eligible for Medicare. Blake concluded that the County would save money by removing the approximately 6,500 Medicare-eligible retirees from NYSHIP coverage and instead self-insuring them. He proposed this idea to Albert Isernio, the principal of Benefit Plan Administrators (“BPA”), a Melville-based company that operated as a third-party administrator for employers running self-insured employee benefits plans. Rather than paying premiums to an insurance company, employers working with third-party administrators like BPA assumed full responsibility for the cost of health insurance claims submitted by covered individuals, and paid a fee to the administrator (i.e., BPA) to review, process, and pay claims with the employer’s funds. Together, Blake and Isernio formulated a plan to withdraw Medicare-eligible County retirees from NYSHIP’s statewide services and transfer them to a BPA-serviced plan, theoretically saving the County money and allowing them to collect fees along the way. They approached Deputy County Executive Robert McDonald, the County’s second-highest operations official, with whom Blake had a close personal relationship.

Significantly, at the time, Nassau County was actually the net beneficiary of its relationship with NYSHIP: the insurance premiums it paid into the Empire Plan were usually less than what the Empire Plan paid out on its claims. (NYSHIP balanced itself with gains from other communities across the state.) Nonetheless, after meeting with Blake and Isernio, Deputy County Executive McDonald formed and chaired a County committee to investigate alternatives to NYSHIP. Eventually, Isernio’s former employer, Ernst and Young (“E&Y”), was retained to analyze the feasibility of changing the County’s health insurance coverage. In November 1995, E&Y advised that the County could not save money by removing its insureds from NYSHIP, and that, in fact, the County had saved millions of dollars in the past and would save even more money in the future by continuing NYSHIP coverage. However, E&Y left a window of opportunity for the Blake/Isernio proposal by opining that the county might save money by removing Medicare-eligible retirees from NYSHIP coverage.

McDonald’s committee then issued a request for proposals (“RFP”) inviting companies to submit plans to insure Nassau’s Medicare-eligible retirees. Unsurprisingly, BPA submitted one such proposal in February 1996. Once proposals came in, however, E&Y found that none guaranteed a reduction in the county’s costs. Accordingly, the County rejected all proposals, including BPA’s, in May 1996.

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8 Blake was also the former Suffolk County Republican Party Chair.
9 A federally-subsidized program providing much less expensive health care coverage.
10 Isernio was also a certified public accountant and once worked for Ernst & Young. On July 19, 1995, USI Insurance Services Corporation purchased BPA; Isernio continued on as BPA’s top executive pursuant to an employment agreement.
After the BPA proposal was rejected, Isernio reached an agreement with Blake to offer a bribe to Deputy County Executive McDonald to obtain the contract. Herbert Schneider, a businessman who had a close relationship with the Deputy County Executive, offered to assist them on condition that he receive a portion of the commissions from BPA. Isernio agreed to funnel the commissions to Schneider’s wife through WMBA. With that arrangement reached, Schneider offered McDonald a bribe of $50,000 to ensure that BPA receive the contract for services on the Medicare-eligible retirees. While McDonald declined to accept the $50,000 bribe, he did not report the offer, nor did he disqualify BPA from further consideration.

Instead, in July 1996 (two months after the first BPA proposal was rejected), Deputy County Executive McDonald authorized Isernio to submit a revised BPA proposal and, in August 1996, without committee consultation or approval, recommended to County Executive Thomas Gulotta that the County accept the revised proposal. This revised proposal contained numerous false representations, with some guarantees even containing forged documentation. On September 23, 1996, the County awarded BPA a $4.5 million contract to administer a self-insurance plan for its Medicare-eligible retirees – with a contract launch date less than two weeks away.

2. The Proposed Solution is Prohibited by State Law but Moves Forward

Fatefully, on the same day BPA was awarded the contract, Nassau County was informed by the State that state law prohibited it from removing Medicare-eligible retirees from NYSHIP without each retiree’s individual consent. As this was a practical impossibility, the state gave Nassau until February 1, 1997 to restore these retirees to the Empire Plan. This would have represented a straightforward—albeit costly—reversal of the past year’s trajectory. However, in January 1997, with the County about to restore the Medicare-eligible retirees to NYSHIP, Isernio doubled-down on the situation, suggesting that the County issue an RFP for a self-

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11 This was at Schneider’s request, as he was on disability at the time and did not want have any income directly to him. Schneider subsequently passed away.
12 He also informed McDonald that he, Schneider, would be personally receiving $50,000 for his part.
13 The revised proposal “guaranteed” $5,000,000 in savings to the County for the first two years of contract performance.
14 The revised proposal, *inter alia*, stated that: (a) BPA serviced 175 accounts that generated $168,000,000 in claims; (b) BPA serviced “sixteen clients with over 1,000 medical participants” including “Calavaras County, County of Yuba, City of Paterson and City of Riverbank,” all of which were located in California; (c) If the County’s MERs became a BPA client, they would be the “sixth largest” BPA client in relative size and represent “5% of BPA’s total claims volume; and (d) BPA would comply with all of the terms of the RFP, which prohibited the payment of commissions. All of these representations were false. Nassau County would actually have been BPA’s largest client by far and would have represented substantially more than 5% of their sales volume.
15 The BPA submission included letters from a stop-loss insurance company and an agency representing a second stop-loss insurance company, supporting Isernio’s guarantee of savings, which were later determined to have been forged. A forged letter from Mutual of Omaha, dated July 2, 1996, guaranteed $5,387,209 in savings, and another from Enterprise Underwriting Services, dated June 26, 1996, guaranteed the same amount.
16 The state cautioned that if the County failed to restore coverage, all County employees would be removed from NYSHIP.
17 This course of action would have breached the county contract with BPA.
insurance plan providing health care coverage for all of its active and retired employees and their dependents.\textsuperscript{18}

In July 1997, Deputy County Executive McDonald issued an RFP for proposals to provide health care coverage as outlined by Isernio’s suggestion. For this round, however, the County did not retain E\&Y to evaluate proposals. Rather, the RFP was prepared with the assistance of BPA and, accordingly, designed with certain specifications and provisions that worked to exclude all of BPA’s competition. BPA responded to the RFP, and its submission was again riddled with falsities and forgeries.\textsuperscript{19} Concurrently, Isernio and Blake offered a bribe of $150,000 to McDonald. This time, he accepted.\textsuperscript{20} On August 22, 1997, McDonald’s committee selected the BPA proposal and recommended to County Executive Gulotta that Nassau again contract with BPA, this time for full health care coverage services. The contract went before the Nassau County Legislature on September 8, 1997,\textsuperscript{21} and a mere three days later the County awarded BPA a 39-month contract to administer a self-insured health care plan for active and retired employees and dependents, under which the County would pay BPA $26,296,140. Five days later, Isernio was calculated the payouts to his co-conspirators on the back of a napkin. One month later, Deputy County Executive McDonald retired from office.\textsuperscript{22}

3. Fraudulent BPA Contract Costs Taxpayers Approximately $80 Million

The crime may have gone undetected but for the fact that the contract quickly became a financial disaster for the County. The costs could not compare favorably with the net savings, effectively subsidies, which had emanated from Empire Plan membership. BPA staff was overwhelmed with the number of claims from a client as large as Nassau County. By July 1998, BPA, through Isernio, told County officials that it would need an additional $15 million to pay budgeted claims. Bafflingly, the County was actually prepared to pay this, when a county

\textsuperscript{18} He additionally began sending a series of letters to McDonald asserting that BPA would guarantee savings of $17.5 million over two years if the county awarded a contract to BPA to administer such a plan.
\textsuperscript{19} BPA guaranteed that the County would save between $11 million and $18 million if it were adopted. The proposal contained numerous misrepresentations regarding the number and size of the BPA client base. It stated that BPA “currently serviced” 257 health and welfare plans with an estimated dollar value of claims handled in excess of $455 million, and that BPA serviced 27 clients, each with over 2,500 plan recipients, including Orange and Los Angeles counties in California, which in fact, it did not. As with his proposal the year before, Isernio directed BPA employees to fabricate and forge letters, purportedly from executives of Mutual of Omaha Life Insurance Companies and Enterprise Underwriting Services, pertaining to stop-loss insurance coverage which he used to support his guarantee of savings. A letter purportedly from Mutual of Omaha, dated January 15, 1997, guaranteed savings of $15,016,921, and a letter from Enterprise, dated August 20, 1997, guaranteed $17,998,400 in savings.
\textsuperscript{20} It was agreed that the bribe would be paid to DCE McDonald after he retired from his County position.
\textsuperscript{21} At the County Legislature’s September 8, 1997 hearing to consider BPA’s proposal, Isernio again made numerous misrepresentations regarding BPA’s client base and the savings the County would realize in awarding the contract to BPA. He stated that (a) BPA acted as a third party administrator to Orange, Los Angeles and Riverside counties in California; (b) BPA employed over 400 persons, who served over 450,000 plan participants “nationwide”; and (c) that BPA’s projections of the County’s cost savings were supported by an insurance carrier that guaranteed a “minimum savings of $15 million.” None of these were true.
\textsuperscript{22} He then created a company, Robert McDonald Associates, Inc., the only purpose of which was to receive his $150,000 bribe.
legislator pointed out that Nassau was supposed to be saving money under the contract, not losing it.

In total, the County lost an estimated $80 million by shifting to self-insurance, and paid $12 million in administrative fees and costs, all before terminating its relationship with BPA. By March 1999, just eighteen months after entering the BPA services contract, Nassau switched back to NYSHIP, and the Nassau County Legislature began conducting hearings on the debacle.

In the aftermath, the Nassau County District Attorney’s Office and the United States Attorney’s Office for the Eastern District of New York launched separate investigations, which quickly morphed into a joint investigation, and led to a federal grand jury\(^{23}\) indicting Robert McDonald, Albert Isernio, William M. Blake, and multiple other co-conspirators, for offenses arising out of the BPA fraud and bribery scheme\(^{24}\). Ultimately, ten of the eleven defendants were convicted.\(^{25}\) The last portion of the massive prosecution ended March 28, 2005, with the County receiving partial restitution for the colossal fraud.

B. AbTech Procurement Scandal (2012-2015)\(^{26}\)

1. Unsolicited Proposal Leads to RFP for Stormwater Filtration

In November 2012, the County received a twenty-eight page “Unsolicited Conceptual Proposal” from AbTech Industries, Inc. (“AbTech”). The AbTech proposal, received by the County in November 2012, was for the design, construction, installation, and operation of water filtration systems for Nassau County sewers. In response to AbTech’s unsolicited proposal, in February 2013 the County issued an RFP for exactly the type of improvement concept that AbTech proposed. Unsurprisingly, AbTech responded to the RFP, and on April 3, 2013, proposed a public-private partnership contract not to exceed $12 million dollars. The proposed arrangement would be for AbTech to “assist the county in meeting its environmental compliance requirements and upgrade its stormwater outfall systems” through the application of its filtration technology. On May 30, 2013, the County’s evaluation committee recommended that AbTech receive the contract award.

\(^{23}\) A federal Grand Jury is superior to a state Grand Jury for corruption investigations for several reasons: First, the federal Grand Jury allows hearsay testimony where the state Grand Jury does not; Second, the federal Grand Jury does not automatically confer transactional immunity to Grand Jury witnesses in contrast to state, and; Third, the federal Grand Jury does not have the strict accomplice corroboration requirements New York State requires by statute.

\(^{24}\) Against some defendants, the indictment also alleged mail fraud, money laundering, conspiracy to money launder, obstruction of justice, witness tampering, and filing false tax returns.

\(^{25}\) One conviction was later reversed on procedural grounds.

\(^{26}\) Details regarding the AbTech matter have been drawn exclusively from the federal criminal complaint and indictment charging Dean and Adam Skelos, filed by the U.S. Attorney for the Southern District of New York. These cases are pending prosecution and defendants are presumed innocent unless and until proven guilty. NCDA has not independently investigated this matter.
On July 1, 2013, the Nassau County Legislature approved the contract, allegedly based on a representation by Nassau’s Chief Deputy County Executive to the Nassau Interim Financial Authority’s (“NIFA”) General Counsel that “time was of the essence.” NIFA approved the contract on October 8, 2013 and was executed by the County Executive on October 8, 2013. At the time, AbTech heralded the deal as a “first of its kind contract for storm water management in the United States.”

2. **State Law Poses a Barrier to AbTech Contract**

As with the BPA scandal, state law hindered full execution of the AbTech contract. AbTech was seeking to utilize a design-build project delivery system in performance of its services (a type of system where a single contract between the contractor and the client provides that the contractor will use an independent licensed design professional to perform all design work for the project so that there need not be a separate contract for that aspect). However, for public construction projects, the use of design-build contracts are generally seen as a violation of the New York State Education Law in the absence of legislation to the contrary.

County officials had integrated state legislative approval as a prerequisite for contract performance by AbTech. When this approval did not immediately come, County officials faced a choice similar to the one their predecessors with the BPA contract seventeen years earlier: reverse the track on the contract due to intervening problems of state law, or push forward regardless. County officials chose the latter course, notifying the State Legislature of the impasse with AbTech unless specific legislation was passed to address and remedy the design-build limitations on the contract.

3. **Contract Halted Following Allegations in Federal Complaint**

The AbTech contract hit a hard brake on May 12, 2015, following allegations detailed in a federal complaint filed by U.S. Attorney Preet Bharara in New York’s Southern District. The complaint alleged that AbTech consultant, Adam Skelos, together with his father, then-New York State Senate Majority Leader Dean Skelos (a Nassau resident and representative) had unlawfully lobbied and pressured County officials to issue an RFP, and ultimately to contract with AbTech. Both Dean and Adam Skelos were arrested, and Dean Skelos was accused of abusing his role as an elected and high-ranking legislative official to induce the state to grant an

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27 This email, quoted in the Skelos complaint, raises questions regarding the expedited handling of contracts where, as here, state statute at the time prohibited the full implementation of the contract.
29 See N.Y. EDUC. L. § 7200 et seq. and §§ 6512-6516.
30 By which point, the County had expended over $150,000 on initial design and consulting work.
31 The May 4, 2015 federal complaint charged Dean and Adam Skelos with three counts of extortion under color of official right, two counts of soliciting bribes in connection with a federal program, and one count of conspiracy to commit honest services fraud. Both have since been indicted. The charges referenced herein are merely allegations, and Dean and Adam Skelos are presumed innocent unless and until proven guilty.
exemption for AbTech’s contract, partially due to his son’s involvement with the firm. Both cases are pending prosecution. However, after the arrests, the County suspended work on the AbTech contract.

C. Scandal Similarities Illustrate Systemic Failures

Together, these scandals, and especially their uncanny similarities, illustrate a systemic failure of Nassau County’s procurement and contract management processes to ward off corruption. In both cases, unsolicited ideas for professional services (an area with the broadest latitude for discretion) were accepted despite no pre-existing need, encouraged despite state law limitations, and manipulated to benefit those entities that originally proposed them. Unfortunately, it has taken the intervention of the criminal justice system—twice—to call attention to the lax evaluation protocols, the lack of transparency in the selection process, and the need for reform.
III. Previous Reform Attempts

Although not encouraging, it is useful to look at the guidance, both external and internal, given to the County between the 1999 administrative end of the BPA scandal and the 2013 administrative dawn of the AbTech contract. What follows is in addition to the insights into the BPA conspiracy provided by its public prosecution by the NCDA and the United States Attorney.


1. The Authority’s Legal Basis and Responsibilities

By 2000, Nassau County was on the brink of financial collapse. It had incurred hundreds of millions of dollars in liability for tax certiorari refunds, was unable to bridge the liability with recurring revenues, and instead issued bonds to cover its debt obligations. As its credit rating had dropped to just one level above “junk” status, the County’s cost of borrowing was extreme. Unwilling or unable to cut recurring expenses or to raise recurring revenue, the County was left with a debilitating imbalance in its budget, further requiring bonding at extreme cost. As it approached a point where debt servicing represented a quarter of all government spending, New York State intervened, in June 2000, by creating the Nassau Interim Finance Authority, a public authority with the capability of borrowing funds on behalf of Nassau County, monitoring the County’s fiscal planning, and, if necessary, imposing control on the County’s finances.

Over the next ten years, NIFA acted as an additional check on Nassau County’s spending and borrowing, often providing guidance on risk and overall budget strategy. However, despite the injection of approximately $500 million dollars in direct subsidy and debt servicing relief, Nassau was unable to extricate itself from its practice of relying on the issuance of debt to cover its tax certiorari obligations. By January 2011, faced with low operating reserves, depressed federal stimulus funding, and restrictive collective bargaining agreements, County officials were unable to produce a satisfactory budget to NIFA. At this point, NIFA exercised its statutory authority under Public Authorities Law § 3669 to impose a “control period,” during which, among other things, it was empowered to review and decide all County contracts prior to their execution, and to establish guidelines requiring the County to submit contracts meeting specific criteria for NIFA’s approval. NIFA’s contract approval guidelines require Nassau County to obtain NIFA approval for all contracts equal to or greater than $50,000. Additionally, NIFA must approve multiple smaller contracts to an individual vendor for the provision of similar services if the total value of the contracts meet or exceed $50,000 in a twelve-month period.

32 See N.Y. PUB. AUTH. L. § 3650 et seq. The state also directly injected over 100 million dollars into Nassau County.
33 Something which NIFA could do at much more favorable rates.
2. The Authority’s Effect on Contracting and Procurement

Following the imposition of the control period, a detailed external analysis of the County’s contract approval process still showed substantial non-compliance with NIFA mandates.

In 2012, New York State Comptroller Thomas DiNapoli initiated an audit of Nassau County’s contract approval process, with the stated objective of examining the internal controls over approval of contracts valued at $50,000 or more (the “NIFA threshold”). This audit came at the request of NIFA officials who believed that the contract approval process was being subverted.\(^{34}\) The audit did not focus on the actual procurement of these contracts, but rather the internal procedural question of their institutional approval once a vendor was selected. To effectuate this audit, the Comptroller’s examiners randomly reviewed contracts that were approved between January 1, 2010 and March 31, 2012.\(^{35}\)

The Comptroller found that County contracts were being performed before they were actually approved by the County Executive or NIFA. In a random sampling of twenty-nine contracts within the date range at issue, auditors found that more than half (fifteen) of the vendors began providing services prior to the contracts being signed and executed by the County Executive.\(^{36}\) Furthermore, in a separate sample of thirty contracts that required NIFA approval (from a date range of April 1, 2011 to March 31, 2012), the Comptroller discovered that the County received goods and services on seventeen prior to either the County Executive or NIFA approving them.\(^{37}\) In detailing these findings, the Comptroller wrote:

Allowing goods and services to be procured prior to completing the formal contract review process defeats the purpose of these external control procedures and is generally not a good business practice because neither party is protected by the terms and conditions of the unapproved contract . . . . County officials told us that the vendor assumes all the risk of providing services to the County before the contract is approved and that the County has no legal obligation to pay the vendor for such services unless the contract is approved. However, it is uncertain if the County is precluded from enforcing the terms and conditions of the unapproved contract in the event the vendor’s performance had been substandard.\(^{38}\)

\(^{34}\) In particular, then-NIFA member George Marlin stated, in a letter to the New York State Comptroller, that “there appears to be a pattern of vendors being hired to perform non-emergency services without prior legislative or NIFA approval.”


\(^{36}\) Id. at 7.

\(^{37}\) Id. at 8.

\(^{38}\) Id. at 9.
State officials reported to the NCDA that the practice of pre-contract receipt of services is, unfortunately, a common occurrence throughout New York State’s municipalities, and not unique to Nassau County. However, in Nassau’s specific case, the deviation is in large part due to the County’s slow and inefficient administrative contract approval process, which is at odds with the County’s budget schedule. Frequently, contracts languish in the process for months, delaying work or purchases critical to the smooth operations of government. NIFA’s control period should have provided additional security in Nassau’s contracting process, but because of process inefficiencies, this safeguard has been routinely ignored, and had a minimal restraining effect on County contracting.39

This process begs for systemic reform because effective oversight is critical, but should not come at the cost of halting the work of government, or exposing well-meaning public servants or the taxpayers to unwarranted liability.

B. Reforms Under County Executive Thomas Suozzi (2004-2009)

1. Administrative Reforms

On March 13, 2001, beset by financial crisis, under the recent shadow of the BPA fiasco, and abandoned by his political party,40 County Executive Thomas Gulotta, who had held the post since 1987, announced that he would not seek re-election. His successor, County Executive Thomas Suozzi, assumed office in January 2002. Just two months later, on March 27, 2002, the BPA indictment against former Chief Deputy County Executive McDonald, Isernio, and Blake was returned and their prosecutions commenced in federal court. This very publicly demonstrated the County’s vulnerability to corruption in its contracting practices, and underscored the need for reform.

One of the first projects undertaken by the Suozzi administration was the development and adoption of the first-ever Countywide Procurement Policy and Procedure Manual, released on September 20, 2004 (hereinafter “Policy Manual”). Enforcement of the Policy Manual’s guidelines was delegated to Helena Williams, who was appointed to the newly-created position of the Deputy County Executive for Compliance.41 Suozzi announced these changes in a letter that read in part:

As you all know, procurement of goods and services is a significant portion of Nassau County’s budget. We have a duty to the County’s taxpayers to ensure that

39 NCDA has, when necessary, allowed contractors to begin performance prior to final contract approval to ensure the critical functions of the office continue without interruption.
40 In January 2001, all nine Republicans on the County Legislature urged him not to seek re-election.
41 Williams had been a Deputy County Executive since 2002; however, in the wake of both an internal self-dealing scandal involving one of County Executive Suozzi’s other Deputy County Executives (Peter Sylver) and a scathing 2004 audit by the then-County Comptroller Howard Weitzman of wasteful government spending, Suozzi appointed Williams to act as Chief Compliance Officer for the County. Williams had extensive background as a labor lawyer.
the County procures goods and services efficiently and effectively, and with absolute integrity. This new written Procurement Policy/Procedure will help us accomplish this objective by serving as a user-friendly reference for all individuals involved in the procurement process about what permissible methods of procurement exist and what the law and County policy require for a procurement to be completed. [...] Procurement is a dynamic field and we expect that the laws and the County’s policies governing procurement will not be static. Therefore, you are advised that this Policy/Procedure will be amended from time to time, as necessary…

Suozzi pledged some of the $3.25 million final restitution payment from the BPA prosecution to fund this new department. The Department issued additional policies in June 2006, and again in January 2009.

An additional administrative reform was the appointment of a Commissioner of Investigations, Bonnie Garone, pursuant to Section 206 of the Nassau County Charter, which provides that the County Executive may appoint such an officer “from time to time,” and “without confirmation by the County Legislature.” As Commissioner, Garone was empowered to hire staff to fill out her department, and in that capacity:

examine the financial and other records of the Comptroller and Treasurer and to make such other examinations as he or she may deem to be for the best interest of the county, of the accounts, methods and activities of each department, institution, office or agency of the county and of the towns and special districts, except only the County Legislature and the Office of Legislative Budget Review, and to report to the County Executive the findings thereon.

As described in the Charter, this position is broadly comparable to the functionality of an inspector general for the County. Garone held this role through the conclusion of the Suozzi Administration.42

2. Ramifications for Modern Procurement Policies

The Policy Manual was comprehensive, and imparted guidance on various issues related to procurement, such as:

1. Formal Sealed Bidding
2. Requests for Proposals
3. Streamlined Competitive Proposals

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42 Garone regularly referred cases to NCDA for criminal investigation and prosecution, but referred no contract-related cases.
Unfortunately, policies have not been comprehensively updated, and the only significant change has been the elimination of the position of Deputy County Executive for Compliance. Though state law requires counties and municipalities to annually review procurement policies and procedures, the county’s procurement policies are substantially out of date, some by more than eleven years, and others, like the 2009 Contract Management Manual, by more than five.

Additionally, the office of the Commissioner of Investigations is substantially defunct. Our repeated inquiries give no reason to believe the office currently exists at all, beyond a description on the County website, and even if it has been subsumed by another office, there is no evidence that the Charter-established function of the Commissioner of Investigations is being actively performed. Indeed, a review of Nassau employment records shows the position of Commissioner of Investigations to be vacant and the published number on the website connects to the Nassau County Human Resources Department. Further, a review of the Nassau County Budgets shows that the Department of Investigations received only $5,500 in 2015, $5,400 in 2014, and $15,400 in 2013, still a paltry sum inadequate to funding a full-time position, let alone a full department. (None of these appropriations, in fact, were even coded for personnel.) And as might be expected, our own files show that there have been no referrals for investigation or criminal prosecution received in the past several years from the Department of Investigations.

Though former County Attorney John Ciampoli was dually appointed as County Attorney and Commissioner of Investigations by County Executive Mangano, the two positions

43 While there have been slight modifications to comport with legal changes, Nassau County departments, in 2015, still the policies and procedures in the manual still reflect the County’s.
44 See N.Y. GEN. MUN. L. § 104-b(4) (“The governing board shall annually review its [procurement] policies and procedures.”)
45 The Office of the Commissioner of Investigations identifies instances of fraud, waste, and abuse and promotes and maintains integrity in county government. The office uses its authority under the county charter to investigate the practices of county agencies and those who work for, do business with, or receive benefits from the county. The office advises the county regarding the remediation of fraud, wasteful practices, or abuse of authority and, where necessary, makes referrals for criminal prosecution. Most of all, the office depends on you, county employees and other concerned citizens, to let us know about situations that should be investigated.
46 Tel. 516-571-3072
47 Per Nassau County Budget Documents, the “Commissioner of Investigations” is linked with the “Department of Investigations,” hence the analysis of this budget item.
48 Adopted Supporting Schedules to 2015 Nassau County Budget, at 63.
49 Adopted Supporting Schedules to the 2014 Nassau County Budget, Operating Departments and Agencies, at 1.
are fundamentally incompatible. While the Commissioner of Investigations is charged with being an independent auditor to identify, investigate, and address malfeasance by County government and employees, a substantial part of the County Attorney’s charter function is to defend the County’s activities and County’s employees. While there can indeed be some overlap—as in the investigation of worker’s compensation claims, for example—broad systems review requires independent and devoted functionality, as does the type of continuous proactive review contemplated by the County Charter. This is especially pertinent in the instant case, as the County Attorney’s other charter functions pertain to its direct involvement in the contract approval process. Regardless, the scale and function of the independent office of the Commissioner of Investigations, which has never been robust, has been gutted, further hampering the comprehensive and independent oversight the contracting process requires.

To summarize, the steps taken toward a stricter compliance with procurement best practices have been either halted or rolled back, NIFA has been circumvented, and oversight by a Commissioner of Investigations exists in no appreciable form.

C. New York State Comptroller Audit (2012-2013)

As previously noted, New York State Comptroller Thomas DiNapoli audited Nassau County’s contract approval process in 2012-2013. In addition to his findings on pre-approval contract performance, the Comptroller devoted a significant portion of the audit to analyzing the practical and temporal compliance with the County’s forty-five day statutory approval path for contracts.

1. Audit Recommendations

The audit concluded that Nassau’s contract approval process was overburdened with multiple and often duplicative layers of review, even prior to NIFA submission. This, in turn, caused the County to be consistently well beyond the Charter-mandated forty-five day limit on contract approval.

Accordingly, the Comptroller concluded the audit by recommending that County officials (1) review and refine the contract approval process to make it more efficient; (2) develop a system to prioritize time-sensitive contracts to obviate the practice of vendors beginning work before formal approval; and (3) meet with NIFA officials to review and update the contract approval guidelines.

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50 Nassau County Charter § 206.
51 Nassau County Charter § 1102.
52 NYS Comptroller Audit at 6-7.
53 Id. at 13.
For its part, on July 13, 2013, the County issued a Corrective Action Plan (“CAP”) in response to the Comptroller’s audit.\(^{54}\) That plan stated that the County would be soon implementing an “Enterprise Resource Planning System” which would migrate contract approval to an electronic system where contracts would be scanned and simultaneously sent to various approval levels.\(^{55}\) The targeted completion date for implementation of this platform was 2014. The system still has not been implemented.\(^{56}\)

2. **Ramifications for Modern Procurement Policies**

If anything, the contract approval process has only grown more complex since the state audit. The Comptroller’s evaluation noted that the County Charter imposed the following stages of review:

1. Initiating Department (procurement and generation);
2. Office of Management and Budget (departmental fund check);
3. County Attorney (approval as to contract form);
4. Insurance Department (if insurance is deemed to be required);
5. County Executive (consultation with initiating department);
6. County Comptroller (encumbrance);
7. County Legislature (if approval required);
8. County Executive (execution).\(^{57}\)

While the County Charter has not changed in this regard, in fact the process has changed, and the stages multiplied.

NCDA received a document from County officials, entitled “Contracts Process,” which details a full twenty-four step process for contract movement through the system:\(^{58}\)

1. Initiating Department;
2. Office of Management and Budget;
3. County Attorney (insurance check);
4. County Attorney (approval as to contract form);
5. County Attorney (draft resolution);
6. County Executive (resolution review);
7. County Attorney (numerical assignment);
8. Office of Legislative Affairs (review for committee);

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\(^{54}\) The CAP was issued from then-County Attorney John Ciampoli, who departed Nassau County service in late 2013 to work as legislative counsel to the New York State Senate.


\(^{56}\) *Id.*

\(^{57}\) *Id.* at 5-6; cf. Nassau County Charter § 300-A(3) (providing approval path).

\(^{58}\) Though the document is undated, the personnel listed thereon indicate that this document was authored post-2013.
9. Counsel to County Executive;
10. County Attorney;
11. Clerk of the Legislature (filing);
12. Rules Committee (approval);
13. County Attorney (attachment of resolution to contract);
14. County Attorney (routing slip sign-off);
15. County Comptroller (claims and legal review);
16. County Comptroller (encumbrance);
17. County Executive (NIFA review determination);
18. NIFA (if over $50,000 individually or by aggregate contracting);
19. County Executive (post-NIFA form);
20. Office of Legislative Affairs (routing slip sign-off);
21. County Legislature;
22. County Executive (signature);
23. Clerk of the Legislature (review);

Startlingly, in twenty-four steps, with six stops in the County Attorney’s office, this meandering and burdensome process provides no clear step for verifying or validating information self-disclosed by potential contractors, vetting contractors for potential conflicts, no check for relevant criminal convictions such as bid-rigging or fraud, no review for troubling litigation, labor issues, tax liens and warrants, or a cross-check with barred contractor lists. There is no stop in the Office of the Commissioner of Investigations, and the County Attorney’s role appears to be largely administrative.

Technology could help remedy these deficiencies and markedly improve the speed of the contract review process, but the County continues the same computer tracking programs that were in existence during the BPA scandal—called ADPICS and FAMIS—which were both designed and installed in 1998. These systems do not allow for simultaneous viewing, and rather compartmentalize “stops” along the way through the approval process to only select viewers.

Technological improvements would promote integrity, auditability, and transparency, while simultaneously speeding the contract review and approval process to ensure departments do not need contractors to begin performance prior to final contract approval.
IV. System Vulnerabilities

Defrauding the contracting process takes only one actor; corrupting it takes two. In assessing vulnerability, a linear review of the stages of approval is irrelevant. Absent the simplest of schemes, an ill-gained contract will always be made to “walk like a duck” through the system architecture. In this arena, corruption occurs when a pre-existing relationship, financial or personal, is undetected and subsequently exploited at the expense of fiduciary duty, and an optimal compliance system will have the robust means to quickly and efficiently detect and expose pre-existing relationships.

Therefore, shoring up Nassau County’s procurement system will be best effectuated by the imposition of symmetrical security on both the vendors and the procurers. Here, that symmetrical security requires comprehensive screening, external oversight, and enforcement, with each step begetting the next. In order to detect relationships, information about actors on both sides must be extensively collected, catalogued, and reviewed.

A. Decentralization Increases Corruption Vulnerability

One of the greatest vulnerabilities of the County is its predominately decentralized procurement process. Broadly speaking, each County department is expected to independently identify needs and initiate requests for services or purchase orders. While these independent actions are governed by the centralized policies and approval tracks referenced above (as well as a Department of Shared Services for purchase orders), the existing system generates silos of procurement and allows for disparate recordkeeping, localized discretion as to form (sole source, personal services contract, purchase order, etc.), and localized discretion as to selection. It also greatly broadens the task of evaluating and correcting contract management processes of the County. We note that there are no periodic countywide meetings of department procurement officials that would serve as forums to discuss and harmonize the disparate procedures.

An example of how the decentralization of recordkeeping and procurement can lead to related problems within the overall process is illustrated by yet another audit by the New York State Comptroller in 2015. In April, the Comptroller released its analysis of the Nassau County Office of the Public Administrator, covering the time period of January 1, 2010 to February 28, 2014.59 While the audit was general—seeking to see if this County Department operated “in compliance with governing statutes and guidelines”—tucked into its findings was the notable discovery that from 2010 to 2013, the County Public Administrator paid fifty-two vendors a total of $1.7 million to provide services to the department, ten of whom, representing more than $400,000 in payments, did not have a vendor application on file.60 The Comptroller also found

60 Id. at 8.
that “the [Department] did not maintain written documentation justifying the selection of these particular vendors,” meaning that it was “not clear that the [Department] used the most qualified vendors at the best available prices.” This illustrates the vulnerability referenced above, and in a County with dozens of departments, each responsible for maintaining its own procurement documentation, this finding exposes what may be costly and widespread problem.

Accordingly, the County would greatly benefit from a permanent, independent, central auditor of the procurement process – not as to form (County Attorney / County Comptroller) or finances (Office of Management and Budget), but as to compliance, methodology, information verification, and relationship-identification. As discussed above, this important role has gone undone in recent years. The County Legislature should remedy this by eliminating the role of Commissioner of Investigations, and replacing it with an independent County Inspector General, appointed by the County Executive, and subject to confirmation by a supermajority of the Legislature, to serve a four-year term subject to termination only for cause. The Inspector General should serve as an independent department, with hiring autonomy, without a reporting line to any elected official. The size and financing of this office should match the scope and import of its task—to guard against and root out corruption and improper influence in the procurement process and to investigate improprieties within the executive departments.

In a prior County administration, there was a clear and high price tag for the failure to closely scrutinize private relationships in the contracting process: approximately $80 million, not including costs of prosecution, in connection with the BPA scandal. In the current administration, the AbTech scenario cost the County over $150,000 before payments were halted, but was poised to cost up to $12 million, or even more. These are just the major scandals that have been identified. Undoubtedly, a dollar figure in the tens of millions should be the yardstick against which a robust Inspector General function should be measured.

Apart from the duties currently assigned to the Commissioner of Investigations, a new County Inspector General should periodically evaluate each department’s recordkeeping and procedure; respond to in-house tips of fraud, waste, and abuse; receive regularized reports of activity from the decentralized selection committees in the various County departments; provide secondary review of vendor performance warehouse screening documentation, and evaluate personal and financial relationships.

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61 Id.
62 While the District Attorney’s office is retroactively conducting this comprehensive contract review following the exposure of clear, systemic problems, it cannot permanently assume this role. The District Attorney’s office is structured to investigate and prosecute crime, not to permanently oversee and monitor the daily machinations of government contracting operations. This role is best served by an independent County Inspector General.
63 Currently, evaluation of vendor performance is within the purview of the initiating department.
B. Outdated Technology and a Diffuse Paper-Based System

However, any such reform process would be largely dependent on the degree of technological improvement to the current contract and vendor tracking systems. In conversations with various County officials, it has become clear that Nassau relies on an archaic, largely paper-based system, and lacks a strong centralized contracting database. As noted above, the technology currently in place dates to the time period of the BPA scandal, twenty years ago, and is not designed for inter-departmental transparency. It is also not designed for the substantive warehousing of vendor information – without which detection of pre-existing relationships is greatly hindered. Indeed, the archiving of contract documents is done in such a way that such reviews and cross-comparisons are hampered. Thus, even with an empowered County Inspector General, the overall efficacy of centralized administrative oversight would be limited.

By way of illustration, in connection with the instant contract review, we have been informed that there is no easily accessible electronic archive of contracts that quickly details their manner of procurement (e.g. lowest responsible bidder, sole source procurement, emergency purchase), contract type (e.g. personal versus non-personal services contract), or the type of goods or services to be provided pursuant to the contract. Even cursory assessment of a contract grouping therefore requires hard copy review. In many cases, a summary sheet will move with the contract file through its approval path, but the procurement documentation is often permitted to remain with the initiating department. Compounding the issue is the consideration that procurement documentation often includes e-mails and other electronic communications, the prompt and comprehensive acquisition of which would currently be a technological impossibility. The potential laborious undertaking of reviewing voluminous paper contracts can therefore serve as a general deterrent for compliance review to ever occur at all – absent some founded suspicion of malfeasance related to a specific procurement.

Contrast this archaic system with the archiving process employed by New York City. New York City Administrative Code § 6-116.2 requires the City to maintain a computerized data system to house detailed information for contracts and prospective vendors (“VENDEX”). This database—which links to information stored on other computerized data systems of New York City departments—is required by law to archive (among other things) the following information on every contract:64

1. Current addresses and telephone numbers of (a) the contractor’s principal executive offices and the contractor’s primary place of business; (b) the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site; (c) any other names under which the contractor has

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64 N.Y.C. ADMIN. CODE § 6-116.2(b).
conducted business within the prior five years; (d) the addresses and telephone
numbers of all principal places of business where the contractor has conducted
businesses within the prior five years;

2. The Dun & Bradstreet Number of the contractor;

3. The Taxpayer Identification Numbers, employer identification numbers or social
security numbers of the contractor or the division or branch of the contractor
which is actually entering into the contract;

4. The type of business entity of the contractor;

5. The date such business entity was formed and all certificates of doing business
filed in the past five years;

6. The principal owners and officers of the contractor, their DOBs, taxpayer ID
numbers, social security numbers, and contact information;

7. The names, addresses, contact information, taxpayer ID numbers and employer
ID numbers of the contractor’s affiliates;

8. The principal owners and officers of affiliates of the contractors (and contact
information thereof);

9. The principal owners and officers of every subcontractor;

10. The type, amount and contract registration number of all contracts awarded to the
contractor;

11. The contract sanction history of the contractor for the past five years, including all
cautions, suspensions, debarments, cancellations of a contract based upon the
contractor’s business conduct, declarations of default on any contract made by
any governmental entity, determinations of ineligibility to bid or propose on
contracts and whether any proceedings to determine eligibility to bid or propose
on contracts are pending;

12. The contract sanction history for the prior five years of affiliates of the contractor
(including the above information);

13. The name and contact information for the contracting officer responsible for the
supervision of the day-to-day management of the contract;

14. Any judgments or injunctions obtained within the prior five years in any judicial
actions or proceedings initiated by any city agency, any elected official, or the
city council against the contractor with respect to a contract and any such judicial
actions or proceedings that are pending;
15. A record of all sanctions imposed within the prior five years as a result of judicial
or administrative disciplinary proceedings with respect to any professional
licenses held by the contractor, or a principal owner or officer of the contractor;

16. The tax returns and whether taxes are owed or outstanding by the contractor;

17. Any outstanding tax warrants and unsatisfied tax liens;

18. Information from public reports of the organized crime control bureau and the
New York State organized crime task force which indicates involvement in
criminal activity;

19. Any criminal proceedings pending against the contractor, and any principal owner
or officer of such contractor;

20. A record of all criminal convictions of the contractor, any current principal owner
or officer for any crime related to truthfulness or business conduct and for any
other felony committed within the prior ten years, and of any former principal
owner or officer, within the prior ten years, for any crime related to truthfulness or
business conduct and for any other felony committed while he or she held such
position or status;

21. All pending bankruptcy proceedings and all bankruptcy proceedings initiated
within the past seven years by or against the contractor and its affiliates;

22. Whether the contractor has certified that it was not founded or established and is
not operated in a manner to evade the application or defeat the purpose of the
evaluation and is not the successor, assignee or affiliate of an entity which is
ineligible to bid or propose on contracts or against which a proceeding to
determine eligibility to bid or propose on contracts is pending;

23. The name and address of anyone the contractor retained, employed or designated
to influence the preparation of contract specifications or the solicitation or award
of the contract.

Anecdotally, to illustrate the superiority of the New York City platform, we have
consistently received a significantly faster turn-around on information requests to New York City
officials than to Nassau County officials on contract vetting records (despite the obvious
differences in relationship and proximity). This is not meant as a slight to the individuals
staffing Nassau County agencies, but a reflection on the disparate availability and use of
technology.

For a new County Inspector General to be armed with the best possible tools for internal
review, the County must significantly invest in an overhaul of contract and vendor tracking
systems. Time and money spent today will avert loss tomorrow.
C. Inadequate Screening of Vendors

New York City also has strong vendor screening protocols. By comparison, Nassau County predominately relies upon vendor self-disclosure in its contracting process, and the County does not consistently and reliably verify this information. Currently, prospective vendors seeking to do business with Nassau County register with the County through its e-procurement system.65 Once registered, the vendor will have full electronic access to the County “bid board” and be notified of business opportunities. The entry-level questions to be a registered vendor with Nassau are: (1) Company Name, (2) Company Tax ID Number; (3) Company DUNS number, (4) Company Address and Contact Info; and (5) Enterprise Type. The person filling out this form must provide their name and e-mail address. This simple set of information, plus a $125 registration fee, will gain a vendor access to the County platform.

The only necessary further disclosure from the vendor comes in the actual bid documents during the contracting process. The NCDA was provided various, sometime overlapping forms, which were represented to be the complete County vendor screening protocols. Among the various certifications, representations, and inquiries, however, there was ultimately very little information collected in aggregate. For example, Nassau has collected a Disclosure and Qualification Statement wherein a vendor,66 in submitting a bid, is required to declare the names and addresses of corporate leadership, the experience of that leadership, the name of the intended project supervisor, three references of past work performance, the manner in which the vendor has inspected the proposed work, any additional “lines of business” in which the vendor is interested, and whether the vendor has “ever failed to complete any work awarded.” Nassau also collects a seven-question “Consultant’s, Contractor’s and Vendor’s Disclosure Form,”67 which, again, requests the names and addresses of corporate leadership, “affiliated and related companies and their relationship” to the vendor, and the names and pedigree information of any person who was “retained, employed or designated” by the vendor to lobby or otherwise promote the vendor’s services to County officials. It is noted that a separate disclosure form is not required for all affiliates and relations, but rather only for those affiliates and related companies “that may take part in the performance of the contract.” It is also noted that the seventh and last question on this form, regarding the retention of lobbyists, was a recent addition derived from Executive Order.

Indeed, on May 15, 2015, in the wake of the AbTech corruption probe, County Executive Edward Mangano issued Executive Orders 1-2015 and 2-2015, which required the following additional disclosures:

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65 A registration fee is required.
66 The NCDA has seen different versions of this form, reinforcing its view that there are disparate requirements in different departments. This section was based upon the most recent submissions from County officials.
67 The first three of which relate to the vendor’s pedigree information.
Executive Order 1-2015: the names and pedigree information of any person or entity retained, employed or designated by the vendor to lobby or otherwise promote the vendor’s services to County officials, the extent of the lobbying activity, and whether or not the person or entity is registered as a lobbyist.

Executive Order 2-2015: requests lobbyists to register with the County and disclose their clients, activities, and lobbying targets.

The bid documents and contracts themselves contain separate certifications. For example, in submitting a bid for work to the County,68 the vendor has to self-certify that “the prices of this bid have been arrived at independently, without collusion, communication, or agreement for the purposes of restricting competition.” The inclusion of this conclusory certification is a state law requirement.69 The actual contracts will contain various compliance certifications including those related to wage laws, occupational safety and health, and labor relations.

While the above-referenced Executive Orders were laudable improvements to the disclosure requirements, Nassau County vendor screening protocols are still woefully inadequate compared to the New York City process, which employs two separate checklists before a vendor can even be considered for business dealings. The first checklist, the Vendor Questionnaire, is itself twenty pages long,70 and comprehensively covers matters as vast and far-reaching as shared office space, political connections, consultancy agreements, and annual gross revenue. The second checklist, the Principal Questionnaire, is an additional seven pages,71 and individually combs through matters such as political postings, work performance, and tax payments. Without their exhaustive total reproduction herein, an idea of the content of these forms may be discerned from the statutory reproduction of the VENDEX database requirements above. New York City also has an expansive staff, including VENDEX investigators, departmental inspectors general, and the city-wide Department of Investigations to cross-check information uploaded into this system.72

D. Ineffective Screening of Government Employee Conflicts

At the same time, vendor screening is only half of a successful crime prevention protocol. Indeed, such a system, on its own and no matter how robust, only generates one series of data.

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68 By Nassau County Law, competitive sealed bids are required for work over $10,000. Personal service contracts do not need to be competitively bid, but are customarily handled through the Request for Proposals process.
69 N.Y. STATE FIN. L. § 139-D.
72 Absent all else, the additional screening layers create a substantial paper trail of putative documentary evidence for case prosecution.
To cross-check this data, and thereby enhance the probability of its accuracy, there must be an equally robust screening on the government side.

The New York State General Municipal Law requires counties to adopt a code of ethics that applies to their officers and employees. It further requires that counties and municipalities with a population of 50,000 or more collect financial disclosure statements annually from its officers and employees. These forms are intended to obtain all pertinent information related to a public employee’s financial dealings with outside businesses that might interfere with his or her public duties, compromise his or her impartiality, or otherwise conflict his or her work performance. Certainly, identification of potential conflicts facing government procurement officials and those public employees directly involved in the contract approval process is a primary reason the financial disclosure requirement was established.

Unfortunately, Nassau protocol dictates that these statements are collected annually in June and reflect the prior calendar year’s interests. These forms are filled out on paper, rather than electronically, severely compromising their utility. A paper-based system makes it harder to search and cross-reference the information using a centralized database (if such a database exists at all). Without centralization, there is little investigatory or screening value in the collection of this financial data, save for a retroactive review of a year-old potential conflict (long after it has occurred).

Ideally, any such information regarding the business relationships and potential conflicts of procurement, management, and other influential public officials should be appropriately stored and independently cross-checked against a corresponding vendor disclosure database. This may seem obvious, but the technological and staffing barriers described above have prevented such a comprehensive compliance system from being realized in Nassau County. Indeed, the decentralization of procurement records, combined with the lack of effective front-end data collection, allows no proactive conflict-checking. Obviously, reactive review is of no prophylactic value.

The General Municipal Law requirements for financial disclosure represent the very least a municipality can do. But local governments can and should go further in their diligence and attentiveness to conflict-checking. We strongly encourage, in connection with the other measures outlined above, that Nassau County immediately reform and modernize this process to provide for regular, electronic financial disclosure, and integrate this data into the screening protocols required to detect pre-existing relationships with vendors.

73 N.Y. GEN. MUN. L. § 806.
74 N.Y. GEN. MUN. L. § 812.
V. Recommendations for Reform

Nassau County’s procurement and contracting process remains prone to manipulation, corruption, and fraud, and changes are urgently needed to prevent future victimization of the taxpayers. NCDA recommends the following:

1. The County should enhance its vendor screening protocols by local law to mirror or exceed those required by New York City. Current vendor screening protocols rely on vendor self-disclosure of only the most basic information, and the county does not require vendors to disclose business-related criminal convictions, liens, tax warrants, jurisdictions in which the company is barred from government contracts, among other pertinent information.

2. The County should immediately take steps to develop and implement a technological platform for the comprehensive integrated tracking of contracts and vendors because the current, paper-based contracting system severely compromises oversight and cripples efforts to identify corruption.

3. The County should streamline and modernize the submission of financial disclosure, beyond the minimum standard set forth by the New York State General Municipal Law. This database should be integrated with the integrated contract and vendor tracking system to automatically flag potential conflicts for manual review by the County Inspector General. The County’s paper-based financial disclosure system does not allow for the efficient, electronic cross-referencing between public officials’ disclosed relationships and potential county contractors, it has little utility in the detection and prevention of corruption.

4. The County should organize annual trainings with all departmental procurement officials, timed with the annual review of its procurement policies as required by General Municipal Law § 104-b(4), because of the decentralization of the procurement process, and what audits have shown to be troubling and costly variations in compliance between departments.

5. The County should comprehensively assess bottlenecks that cause crippling delays in the review process, and implement technological and staffing solutions to remedy them. Moreover, the County should ensure compliance with the NIFA statute, rules, and regulations.

6. Regardless of the dollar amount, unsolicited proposals should be cataloged for public inspection, and the County Legislature should review any instance of an unsolicited proposal leading to a contract that is ultimately awarded to the vendor who proposed it.
Vulnerability to corrupt contracts stemming from unsolicited proposals, and the susceptibility of the RFP process to manipulation, warrants additional scrutiny.

7. Contracts that fall just short of dollar thresholds that trigger additional scrutiny ($25,000 for legislative approval and $50,000 for NIFA approval) should be subject to additional review by a new County Inspector General.

8. The Legislature should modify the County Charter to eliminate the position of Commissioner of Investigations due to its history of ineffectiveness, and replace it with an independent and adequately-staffed County Inspector General, appointed by the County Executive and confirmed by a supermajority of the County Legislature, to serve a four-year term, removable only for cause. The County Inspector General should be afforded broad investigative authority over executive departments and the procurement process, tasked with the comprehensive vetting of county contractors, and directed to refer possible criminal conduct to the appropriate agency for prosecution.

The NCDA recommends that the County Executive convene a team of experts to manage a comprehensive overhaul of the County’s contracting process. NCDA offers its assistance.
VI. Ongoing Investigation

In addition to this process review, a NCDA team of investigators, prosecutors, and support staff, working in collaboration with the Public Corruption Bureau, has begun a comprehensive review of vendors engaged and contracts executed by Nassau County for the initial time frame of 2012 to present. The team is reviewing contracts for illegality, undisclosed relationships, misrepresentations or omissions made in contract documentation. In addition, the team is vetting contractors for serious criminal convictions, unpaid taxes, and cross-referencing barred contractor lists from other jurisdictions. Investigators are also placing special emphasis on contracts that initiated with an unsolicited proposal, as well as those that narrowly escape legislative scrutiny by falling just shy of the $25,000 threshold, and those just under the $50,000 benchmark that triggers NIFA review.

Among other findings, investigators have already identified a vendor doing business with Nassau County with ties to a convicted bid-rigger and an established link to organized crime. Investigators have also identified a contractor with a felony conviction and bankruptcy, and a multi-contract recipient with a multiple outstanding warrants for unpaid taxes. The County does not comprehensively vet contractors to uncover these problems, and county policies do not provide clear guidance for vendor eligibility. These early findings underscore the immediate need to reform and strengthen Nassau’s contracting process to prevent corruption.

As this investigation continues, findings significant to the formulation of County policy will be released publicly, and findings of criminality will be aggressively prosecuted by the NCDA.

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75 NCDA is not reviewing local municipal contracts or contracting processes at this time. Reports of corruption in any government contract or contracting process should be directed to the District Attorney’s Public Corruption Bureau. All reports will be reviewed.
BY HAND DELIVERY

Acting District Attorney Madeline Singas
Office of the Nassau County District Attorney
262 Old Country Road
Mineola, New York 11501

Re: Special Report on the Nassau County Contracting Process

Dear Ms. Singas:

Please be advised that we have received your report dated July 2015 entitled “Special Report on the Nassau County Contracting Process” (referred to herein as, the “Report”). Having had the opportunity to read the Report, we provide you with our response.

At the outset, it is important to note that the County’s current contract system was adopted by the Nassau County Legislature through a series of local laws passed primarily in 1998, 1999 and 2000. These local laws were intended to make the process more transparent and add an additional layer of legislative scrutiny and approval. Today, the County’s contract approval process is comprehensive, and fully complies with all applicable New York State and federal laws and rules.

We are always, though, open to improving our processes, where merited. Accordingly, we are pleased to notify you that we are conforming our vendor disclosure requirements for contracts let through sealed bid solicitations to the more stringent disclosure requirements currently in place with respect to contracts awarded through the request for proposals solicitation process. We also note that we plan to empanel an independent advisory committee to take an objective look at the contract processes. However, we have found factual inaccuracies and deficiencies in the Report that we must point out to you, with a request that you revise, in a timely manner, the Report to reflect actual contract practices. More generally, we take issue with the
tenor of the Report, which, in our view, understates the controls currently in place and overstates the risk to the County.

Factual Inaccuracies and Deficiencies in the Report.

Vendor Disclosure Requirement Inaccuracies. The Report incorrectly describes in a negative tone the current County requirements as they pertain to vendor disclosures. First, the chart on page 3 of the Report is factually incorrect. The chart is intended to compare County requirements to New York City requirements in an apparent attempt to demonstrate how the County’s requirements pale in comparison to those of New York City. However, this chart grossly understates the vendor disclosure information currently requested by the County under its existing practices. The chart is almost completely inaccurate with respect to vendor disclosure requirements currently employed by the County for contracts procured through the RFP process. Under current RFP processes, the County’s standard Business History and Principal Questionnaire Forms -- see attached -- in fact require that prospective contractors disclose virtually all of the information required by New York City. Contrary to the assertions in the Report, the County does indeed require vendors to disclose "business-related criminal convictions, liens, tax warrants, jurisdictions in which the company is barred from government contracts..."

Next, while the chart on page 3 is more accurate with respect to information required from bidders solicited by Purchasing and the Department of Public Works ("DPW") in connection with sealed bids, here too the chart is misleading. The chart, and, more generally the Report through a series of repeated statements, incorrectly represents that neither Purchasing nor DPW looks into whether a prospective vendor has been debarred. In fact, Purchasing checks with the debarment list provided by New York State and DPW, in its vendor disclosure statement, specifically inquires as to whether a bidder has ever been barred from bidding municipal or public contracts. DPW also specifically inquires as to whether bidders have violated prevailing wage and other labor laws.

In addition, the Nassau County Charter prohibits the County from awarding contacts to any person who is in arrears to the County on a debt, contract or other obligation, including the obligation to pay taxes. In fact, County contracts include a “no arrears” representation by the vendor.

Through the chart on page 3, and through repeated assertions throughout the Report, the Report repeatedly trumpets a false message.

Procurement Training. The finding in the Report that the County’s procurement policies are "substantially out of date, some by more than eleven years...." is not accurate. First, the Procurement Policy was most recently updated in May 2015 and, at that time, all department heads attended a training session where the County’s procurement policies and procedures were reviewed, including procedures for all types of contracts.

In addition, the Report fails to show in what sense the content of the policy is out of date. The Report fails to provide any specific inaccuracies in the policy. In fact, when the policy was last reviewed, only a few updates were needed. A related point: the Report fails to acknowledge
the close relationship and frequent communication between County Attorney staff and County agencies on procurement issues and questions, which contacts arise on a frequent and continuing basis at all times and provide real time guidance to officials. The policy is by no means the only source of procurement guidance.

Please contact me should you have any questions regarding the foregoing. Thank you.

Sincerely,

[Signature]

Carnell T. Foskey
County Attorney

Attachment
APPENDIX C

Business History Form

The contract shall be awarded to the responsible proposer who, at the discretion of the County, taking into consideration the reliability of the proposer and the capacity of the proposer to perform the services required by the County, offers the best value to the County and who will best promote the public interest.

In addition to the submission of proposals, each proposer shall complete and submit this questionnaire. The questionnaire shall be filled out by the owner of a sole proprietorship or by an authorized representative of the firm, corporation or partnership submitting the Proposal.

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS).

Date: __________________________

1) Proposer's Legal Name: __________________________

2) Address of Place of Business: __________________________

List all other business addresses used within last five years:

________________________________________________________________________

3) Mailing Address (if different): __________________________

Phone: __________________________

Does the business own or rent its facilities? ______________

4) Dun and Bradstreet number: __________________________

5) Federal I.D. Number: __________________________

6) The proposer is a (check one): _____ Sole Proprietorship _____ Partnership _____ Corporation _____ Other (Describe) __________________________

7) Does this business share office space, staff, or equipment expenses with any other business? Yes ____ No ____ If Yes, please provide details:

________________________________________________________________________

8) Does this business control one or more other businesses? Yes ____ No ____ If Yes, please provide details:

________________________________________________________________________

9) Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business? Yes ____ No ____ If Yes, provide details:

________________________________________________________________________

10) Has the proposer ever had a bond or surety cancelled or forfeited, or a contract with Nassau County or any other government entity terminated? Yes ____ No ____ If Yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture: or details
APPENDIX C

regarding the termination (if a contract).

11) Has the proposer, during the past seven years, been declared bankrupt? Yes ___ No ___ If Yes, state date, court jurisdiction, amount of liabilities and amount of assets

12) In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency? And/or, in the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business. Yes ___ No ___ If Yes, provide details for each such investigation.

13) In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies? And/or, in the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual’s position at or relationship to an affiliated business. Yes ___ No ___ If Yes, provide details for each such investigation.

14) Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person’s employment, or since such employment if the charges pertained to events that allegedly occurred during the time of employment by the submitting business, and allegedly related to the conduct of that business:
   a) Any felony charge pending? No ___ Yes ___ If Yes, provide details for each such charge.
   b) Any misdemeanor charge pending? No ___ Yes ___ If Yes, provide details for each such charge.
   c) In the past 10 years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? No ___ Yes ___ If Yes, provide details for each such conviction.
   d) In the past 5 years, been convicted, after trial or by plea, of a misdemeanor? No ___ Yes ___ If Yes, provide details for each such conviction.
APPENDIX C

e) In the past 5 years, been found in violation of any administrative, statutory, or regulatory provisions? No ___ Yes ___ If Yes, provide details for each such occurrence. ______________________________________________________

15) In the past (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? No ___ Yes ___; If Yes, provide details for each such instance. ______________________________________________________

16) For the past (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? No ___ Yes ___ If Yes, provide details for each such year. Provide a detailed response to all questions checked 'YES'. If you need more space, photocopy the appropriate page and attach it to the questionnaire. ______________________________________________________

Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

17) Conflict of Interest:
   a) Please disclose:

   (i) Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

   (ii) Any family relationship that any employee of your firm has with any County public servant that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

   (iii) Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in acting as a collection agent on behalf of Nassau County.

   b) Please describe any procedures your firm has, or would adopt, to assure the County that a conflict of interest would not exist for your firm in the future.
APPENDIX C

Attachments to Business History Form

Please provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

A. Include a resume or detailed description of the Proposer's professional qualifications, demonstrating extensive experience in your profession. Any prior similar experiences, and the results of these experiences, must be identified.

Should the proposer be other than an individual, the Proposal should include:

i) Date of formation;

ii) Name, addresses, and position of all persons having a financial interest in the company, including shareholders, members, general or limited partner;

iii) Name, address and position of all officers and directors of the company;

iv) State of incorporation (if applicable);

v) The number of employees in the firm;

vi) Annual revenue of firm;

vii) Summary of relevant accomplishments

viii) Copies of all state and local licenses and permits.

B. Indicate number of years in business.

C. Provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

D. Provide names and addresses for no fewer than three references for whom the Proposer has provided similar services or who are qualified to evaluate the Proposer's capability to perform this work.

Company________________________________________________________

Contact Person____________________________________________________

Address___________________________________________________________

City/State_________________________________________________________

Telephone__________________________________________________________

Fax #_____________________________________________________________

E-Mail Address_____________________________________________________
APPENDIX C

Company ________________________________
Contact Person ____________________________
Address __________________________________
City/State _________________________________
Telephone _________________________________
Fax # ________________________________
E-Mail Address ______________________________

Company ________________________________
Contact Person ____________________________
Address __________________________________
City/State _________________________________
Telephone _________________________________
Fax # ________________________________
E-Mail Address ______________________________
APPENDIX C

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, ________________________________, being duly sworn, state that I have read and understand all the items contained in the foregoing pages of this questionnaire and the following pages of attachments; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this questionnaire and before the execution of the contract; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this questionnaire as additional inducement to enter into a contract with the submitting business entity.

Sworn to before me this day of 2009

______________________________
Notary Public

Name of submitting business: ______________________________________________________

By: __________________________________________________________________________
    Print name

__/__________________________________________________________________________
    Signature

__/__________________________________________________________________________
    Title

__/__________________________________________________________________________
    Date
PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered and the answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name ___________________________________________________________
   Date of birth ____/____/____
   Home address ___________________________________________________________
   City/state/zip ___________________________________________________________
   Business address _________________________________________________________
   City/state/zip ___________________________________________________________
   Telephone _______________________________________________________________
   Other present address(es) ________________________________________________
   City/state/zip ___________________________________________________________
   Telephone _______________________________________________________________
   List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)
   President ____/____/____ Treasurer ____/____/____
   Chairman of Board ____/____/____ Shareholder ____/____/____
   Chief Exec. Officer ____/____/____ Secretary ____/____/____
   Chief Financial Officer ____/____/____ Partner ____/____/____
   Vice President ____/____/____ ____________________________ ____/____/____
   (Other)

3. Do you have an equity interest in the business submitting the questionnaire?
   NO ___ YES ___ If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire? NO ___ YES ___ If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or not-for-profit organization other than the one submitting the questionnaire? NO ___ YES ___ If Yes, provide details.

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer? NO ___ YES ___ If Yes, provide details.
APPENDIX C

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:
   a. Been debarred by any government agency from entering into contracts with that agency? NO ___ YES ___ If Yes, provide details for each such instance.
   b. Been declared in default and/or terminated for cause on any contract, and/or had any contract cancelled for cause? NO ___ YES ___ If Yes, provide details for each such instance.
   c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards? NO ___ YES ___ If Yes, provide details for each such instance.
   d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business’s ability to bid or propose on contract? NO ___ YES ___ If Yes, provide details for each such instance.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated? If ‘Yes’, provide details for each such instance. (Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.)
   a) Is there any felony charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.
   b) Is there any misdemeanor charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.
   c) Is there any administrative charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.
   d) In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? NO ___ YES ___ If Yes, provide details for each such conviction.
   e) In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor? NO ___ YES ___ If Yes, provide details for each such conviction.
   f) In the past 5 years, have you been found in violation of any administrative or statutory charges? NO ___ YES ___ If Yes, provide details for each such occurrence.
APPENDIX C

9. In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? NO ____ YES ____ If Yes, provide details for each such investigation.

10. In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer? NO ____ YES ____ If Yes; provide details for each such investigation.

11. In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? NO ____ YES ____ If Yes; provide details for each such instance.

12. For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? NO ____ YES ____ If Yes, provide details for each such year.
CERTIFICATION
A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH
THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT
RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY
SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, __________________________, being duly sworn, state that I have read and understand all the items
contained in the foregoing pages of this questionnaire and the following pages of attachments; that I supplied
full and complete answers to each item therein to the best of my knowledge, information and belief; that I will
notify the County in writing of any change in circumstances occurring after the submission of this questionnaire
and before the execution of the contract; and that all information supplied by me is true to the best of my
knowledge, information and belief. I understand that the County will rely on the information supplied in this
questionnaire as additional inducement to enter into a contract with the submitting business entity.

Sworn to before me this __________ day of ______________ 2009

_________________________________________________________

Notary Public

____________________________

Name of submitting business

____________________________

Print name

____________________________

Signature

____________________________

Title

______/_______/_______

Date
July 11, 2015

Carnell T. Foskey
Nassau County Attorney
One West Street
Mineola, New York 11501

RE: Reply Letter
Report on County Contracting Process

Dear Mr. Foskey:

Thank you for your review of the Special Report on the Nassau County Contracting Process and for your prompt submission of a response. I want to be clear that the role of the District Attorney’s Office issuing the report on the contract process was primarily one of crime prevention strategy. The views and findings expressed were borne from our desire to harden the contracting process against fraud and corruption – guided by our experience prosecuting all manner of white collar crime and the startling discoveries we have made thus far in our review of County vendors. Accordingly, we are appreciative that you are taking steps to empanel an advisory committee, which hopefully will incorporate suggestions espoused in the report.

In your response, you raise two points of contention. The first issue you raise relates to our conclusions regarding existing vendor disclosure requirements, and you enclose the Business History and Principal Questionnaire required in the county’s RFP process. Please be advised that the point conveyed in the report was one of disparate screening protocols across different departments for different categories of contracts, compounded by a lack of strong centralization of the data collected (so that the individual departments or a central auditor could utilize the collective knowledge of the county). Accordingly, the chart produced in the executive summary was meant to be a succinct representation of the county-wide screening protocols (not just for a specific subset of contract procurement or specific department). In the comparison with the NYC Administrative Code, we note that NYC’s uniform data was collected on “every contract.”

At a prior meeting with you, your staff, and a member of the purchasing department, the District Attorney’s chief investigator, chief assistant, public corruption chief, and myself, our office requested a complete set of current screening documents employed by the county. As you are undoubtedly aware, the screening documents are constantly updated and we requested the current documents in effect. We were subsequently provided several documents, the substance of which were incorporated into the report. When we asked specifically how the documents were verified by the County, we were told at the aforesaid meeting that the “rumor mill” served as verification. In the wake of the County Executive’s May 2015 Executive Order, my office additionally secured the newly revised “County of Nassau Consultant’s, Contractor’s and Vendor’s Disclosure Form,” which
applies to “every request for proposals, request for qualifications, request for expressions of interest and every request for bid,” and is included in “every bid document published on the Nassau County Purchasing website.” We additionally evaluated the various appendices and certifications required in bid documents and contract language. We maintain the sentiment, produced in the report, that Nassau County’s system predominately relies upon vendor self-disclosure in its contracting process, and does not consistently and reliably verify this information. We rest the former part of that statement on the documents provided by your office, and the latter on conversations with other county agencies and the preliminary findings of our investigation into various vendor backgrounds. If there are additional universal screening documents that you wish to bring to our attention, we would again request that all such documents be provided. We did note, in footnote 66, that we have seen different versions of disclosure forms, “reinforcing the view that there are disparate requirements in different departments.” Standardizing and harmonizing protocol in the contracting process is indeed at the heart of this report. To that end, we are indeed pleased by the notification in your correspondence that you are now conforming vendor disclosure requirements for contracts let through bid solicitations to the “more stringent” disclosure requirements of the proposal solicitation process.

Furthermore, in your letter you reference how the Nassau County Charter prohibits the County from awarding contracts to any person who is in arrears to the County on a debt, contract or other obligation, including the obligation to pay taxes and requires a “no arrears” representation by the vendor. This is not in dispute; rather, at issue is the screening protocols to ensure Charter compliance, which, from our preliminary findings, are deficient. Undoubtedly, the County has a preference to avoid contracting with certain questionable vendors. The gravamen of the Report is that these very questions should and must be verified – relying on self-certification is not enough.

With regard to your statement that the 2004 Policy and Procurement Manual was updated in May 2015, I note that NCDA staff had a meeting with your designated staff on May 28, 2015 during which it was specifically asked whether the 2004 Manual was still in effect and County Attorney staff stated it was the most current document (bearing a 2004 cover page), though updates may be inserted as needed. This was also confirmed with the County Comptroller’s Office. If you have indeed issued a new 2015 Procurement Manual, please provide my office with a copy for review. If you have indeed issued any updates to the 2004 copy, please provide a copy for review. I have no doubt that your office is available for guidance on questions about existing procurement policy. At issue is whether sufficient security exists under present county architecture to proactively identify pre-existing relationships; not the amount of guidance available on an existing protocol document.

I lastly wish to address your concerns about the overall tenor of the report, which you feel overstates the “risk” to the County. In my office’s view, the tenor does match the risk. We believe there is great risk for corruption, and early findings of our contract review give reason for that great concern. Additionally, the report began with a twenty year recap of the county’s history – scandal to scandal with little comprehensive change in between. The report also made every effort to quantify the scandal – approximately $80 million from BPA and a near miss of $12 million from AbTech. My office is well aware of the financial cost of corruption and government fraud and put those facts forward not only to justify the “tenor” but to quantify the need for the re-invigoration of the Commissioner of Investigations/establishment of a new Inspector General posting. We hope that this recommendation is taken into primary consideration by your advisory committee.

We stand by the findings and recommendations of the report. Comprehensive improvements
should be made in screening, vetting, verification, and databasing contracts. Our position is hardened by our preliminary findings of vendor history, referenced in the report. The efforts you have mentioned thus far in your letter – the empanelling of an advisory committee and the expansion of screening protocols to an additional procurement category – are a promising beginning. As you note in your letter, we owe the current contract system predominately to legislative activity in 1998-2000. Accordingly, it is long since time for comprehensive reform. At your request, we will annex your response and this reply to the Report, which would be akin to auditing practice.

I again acknowledge the cooperation of your office in this process and look forward to a continuing dialogue as Nassau endeavors to improve upon its contracting processes.

Very truly yours,

Jed L. Painter
Counsel to the Acting District Attorney
Nassau County