

Nassau County Office of the Inspector General



2022 ANNUAL REPORT

Jodi Franzese, Inspector General

This report is available on our website <https://www.nassaucountyny.gov/4747/Inspector-General>

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Welcome to the fourth Annual Report of the Nassau County Office of the Inspector General

Introduction – The Inspector General Concept

“... IGs have a simple charge: they need to make sure government is working well and in the way it is intended.”¹

The basic concept underlying an Inspector General (IG) office is that government, a large institution dedicated to serving the public, should build into itself an independent oversight mechanism for ongoing monitoring, evaluation and, when needed, correction. IG offices are designed to be objective and impartial entities, free of partisan loyalties and influence, to fulfill that function.

This is not a novel or untested concept; rather, it is well established and as old as our nation, beginning with the appointment in 1777 of an Inspector General for the Continental Army during the Revolutionary War. While the Inspector General concept arose in the military, where the IG typically focuses on such things as discipline, efficiency, combat readiness, and accountability for property, civilian IGs are typically focused on preventing and detecting fraud, waste of funds, abuse of office and corruption, as well as promoting effectiveness, economy and transparency in governmental organizations.

Today's IGs are a proven success in fostering good governance, preventing and detecting wrongdoing and waste, and promoting accountability and integrity. Since the establishment of the first federal civilian IGs in the 1970s,² many states, counties and cities across the nation have instituted their own office of Inspector General (OIG) in recognition of the important and unique value they bring. While many OIGs have now been in existence for decades, it is also common for new ones to be created, as occurred a few years ago here in Nassau County. Even in the relatively brief time since the formation of Nassau County's OIG, new OIGs have been established in places such as Atlanta, Georgia and Baltimore County, Maryland. There are now over 165 state and local OIGs in the United States, in addition to over 70 OIGs covering

¹ Quoted from a Brookings Institution federal governance study entitled *Political appointees as barriers to government efficiency and effectiveness: A case study of inspectors general*; Center for Effective Public Management at Brookings, April 2016.

² The Federal government created its first civilian IG offices in the 1970s (excepting the Central Intelligence Agency IG created in 1952). At about the same time, in 1978, the City of New York established its own IG program, having an Inspector General's office for each municipal department, significantly amplifying a municipal oversight structure tracing back to 1873.

virtually all federal agencies.³ These offices collectively form a community of practice that has developed professional principles and standards, promulgated by the Association of Inspectors General (AIG), and, at the federal level, the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

OIGs, when properly established and maintained, can provide independent, objective oversight of government operations, by conducting investigations, audits and reviews, and providing recommendations where warranted. OIGs foster good government in many ways, e.g.:

- **Restoration of Public Trust.** It is well known that a corruption or ethics scandal erodes public faith in its government officials. The establishment of a credible and robust OIG as a permanent part of the government is a concrete statement of values and acts as a pillar of reform. Indeed, when an OIG maintains ongoing independent oversight of vulnerable governmental operations it can both help shift the culture of the municipality and restore public trust.
- **Promoting Public Accountability.** Accountability is essential to maintaining public trust. While the vast majority of government officials and employees are honest and honorable persons, an OIG serves as a necessary safeguard to ensure that all public servants are indeed working in the public interest. The presence of an OIG serves to encourage government to work effectively and with integrity. Conversely, it discourages those who might engage in corruption, nepotism, conflicts of interest or otherwise abuse their positions or violate public trust.
- **Deterring Fraud.** A key OIG role is fraud prevention. Fraud is often committed as a “crime of opportunity;” i.e., when there are perceived weaknesses in internal controls, a person might seize the opportunity to engage in fraudulent conduct without fear of detection. An active, committed OIG increases the likelihood that fraud will be discovered, and thus fewer people will risk detection.⁴
- **Providing Economic and Operational Benefits.** The existence of an OIG can provide many positive benefits, such as contributing to cost savings and

³ In a 2015 letter, former United States Senator John Glenn (R-OH) said this about the passage of the law creating Federal OIGs some three dozen years earlier: “The Inspector General Act has stood the test of time. The billions of dollars recovered for the government and the increased efficiency and effectiveness of government programs and operations are a testament to the Act’s continued success.”

⁴ A person’s willingness to engage in fraud or corrupt behavior may also be associated with their ability to rationalize their conduct; therefore, a strong and unambiguous code of ethics, for employees and for vendors, is a companion cornerstone of deterrence.

increased effectiveness. For example, the deterrent effect of a robust IG office can result in significant (albeit sometimes difficult to quantify) savings,⁵ such as preventing attempts at fraudulent billing or the delivery of substandard goods or services. An OIG's sustained focus on business integrity and transparent contracting processes can help "level the playing field" for law-abiding vendors, providing incentive for increased competition and better pricing for the government. Additionally, the economy of government operations can be enhanced by implementing OIG recommendations for reducing waste or improving efficiency effectiveness. Moreover, some OIG activities may result in cost avoidance, e.g., detecting and thus ending, fraud schemes; stopping financial losses ("stopping the bleeding"), and may in some instances even lead to monetary recoveries.⁶

- Providing a Trusted Resource and Objective Resolutions. People need an independent, trusted entity to whom they can bring sensitive concerns. Government organizations also need a trusted process, free of political or partisan considerations, for reviewing allegations of wrongdoing. An OIG provides a credible mechanism for receiving, reviewing, and resolving allegations. Not only can the OIG objectively vet allegations and determine the facts, but having an impartial, non-partisan, professional office conduct the inquiry lessens claims of a biased outcome or inadequate investigation.

Inspector General offices bring to their work a combination of disciplines, tools, and focus that is unique in the area of governmental oversight. An OIG utilizes approaches – both reactive and preventative – from the realms of auditing, investigations, compliance reviews, program evaluations, and management analyses. No other oversight structure so comprehensively blends these fields together.

Strictly-audit organizations typically conduct audits applying generally accepted auditing standards to assure that auditee organizations operate in compliance with established criteria; e.g., ascertain whether financial statements contain significant misstatements, verify that funds are being spent and accounted for properly, assess strength of internal controls, or determine

⁵ The Brookings Institution has noted with respect to federal OIGs' return-on-investment (ROI) "that ROI does not encapsulate all of the non-monetary benefits IG's bring to government in the form of deterrence, efficiency, improved practice or legislative oversight . . . but are ultimately too difficult to measure accurately . . ." *Political appointees as barriers to government efficiency and effectiveness: A case study of inspectors general*. Center for Effective Public Management at Brookings, April 2016.

⁶ A Brookings Institution study of federal OIGs commented that, "The reality, when it comes to OIGs, is that many are a great investment for government." *Sometimes cutting budgets raise deficits; The curious case of inspectors' general return on investment*. Center for Effective Public Management at Brookings, April 2015.

whether programs are operating correctly and effectively. In contrast, investigative organizations typically have a targeted, forensic focus on detecting and exposing dishonesty and/or misconduct, with investigations sometimes based on specific allegations or particular suspicions of wrongdoing.

Often, OIG audit work pertains less to accounting matters than to performance assessment and management analysis. The common audit role of an OIG, in the context of the contracting/procurement process, differs from entities whose role is to approve claims for payment or review as to form. Rather, the OIG may be focused on such things as the prevention and detection of fraud, assessing compliance with controls, verifying that records match reality, confirming receipt of deliverables, and gauging effectiveness and transparency of procedures. The OIG's evaluative function positions it to suggest systemic improvements and advocate for the use of best practices.

With respect to investigations, the OIG's multifaceted function goes beyond the traditional role of law enforcement investigators. OIGs are distinguishable from purely law enforcement agencies as the latter cannot serve as ongoing monitors or evaluators of the municipality's daily operations. They are not able to continuously explore, identify, and address systemic issues within government agencies. The City of Chicago's former Inspector General, Joseph Ferguson, previously a prosecutor, has noted:

. . . the prosecutor is seldom positioned or equipped to drive the structural or programmatic changes that I saw were necessary to prevent future wrongdoing. What drew me to the Inspector General function was the pairing of investigative enforcement tools that address individual misconduct with audit and compliance tools that can address the systemic issues that permit wrongdoing to occur.⁷

In the course of their investigative work, OIGs are routinely alert to, and examine, structural or systemic matters that go beyond the individual events at issue. They look at, for example, the adequacy of management controls, adherence to policy, and the effectiveness and transparency of programs and procedures. In short, OIGs endeavor to identify the vulnerabilities in the system that allowed the issue to occur in the first place.

Moreover, law enforcement agencies investigate specific events or situations, where their role is largely limited to pursuing criminal conduct, typically reactively (i.e., after-the-fact). OIGs however, typically conduct both criminal *and* noncriminal investigations. Impartial, objective investigations of non-criminal misconduct or irregularities are important to the proper functioning of, and public confidence in, government. In addition to their inherent significance, non-criminal inquiries may also lead to the discovery of larger issues that might otherwise not be detected and addressed. Further, OIGs conduct both reactive and proactive

⁷ Quoted in Profiles in Public Integrity, Center for the Advancement of Public Integrity, Columbia Law School.

inquiries, and the latter can uncover unreported or unknown issues.

Finally, external law enforcement agencies often lack the body of institutional knowledge that a dedicated oversight office builds over time. A mature OIG can bring to bear detailed understanding of organizational structures and history, roles, processes, and records systems.

The combined mission of an independent, non-partisan investigative and general oversight agency enables an OIG to serve the government in a much more effective way than if either part of this mission stood alone.



About the Nassau County OIG

Mandate and Mission

Nassau's OIG has a broad statutory mandate under the County Charter to prevent and detect fraud, waste, abuse and illegality impacting the County government or its funds. The mission of the OIG is to foster and promote integrity, accountability, effectiveness, and efficiency in the administration of programs and operations of Nassau County government, with special emphasis on the County's contracting and procurement processes.

Nassau County's OIG accomplishes its mission through investigations, audits, reviews, and other activities designed to detect and prevent fraud, waste, abuse and illegal acts, and enhance County government operations.

Some examples of the matters that the OIG may look at are:

- Purchasing, bidding, or contracting irregularities.
- Fraud by contractors/vendors or others receiving County funds.
- False filings by entities seeking to do business with the County.
- Conflicts-of-interest or other ethics violations.
- Bribes, gratuities, or kickbacks involving County employees or officials.
- Theft of Nassau County funds or resources.

- Significant waste of County money or inefficiency.
- Adequacy of, and compliance with, controls and policies.
- Effectiveness and transparency of governmental processes.
- Serious employee misconduct.
- Whistleblower reprisal.

The OIG is committed to fulfilling its mandate and accomplishing its mission by cultivating and safeguarding a transparent, honest, and accountable County government, and an environment in which the County's goods and services are acquired without fraud and in the public interest.

Founding

The statutory purpose of the OIG is set out in Section 185 of the Nassau County Charter, entitled "Office Created and Established and Purpose of the Office." It provides:

There is hereby established an independent office of the Inspector General which is created in order to provide increased accountability and oversight of County operations, to detect and prevent waste, fraud, abuse and illegal acts in programs administered or financed by the County, particularly the County's contracting and procurement processes, to promote transparency, efficiency and integrity in the County contracting and procurement process, and to assist in increasing economy, efficiency, and effectiveness in the administration of the County government. The Inspector General shall initiate, conduct, supervise, and coordinate investigations, audits, reviews and examinations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct and other abuses by elected and appointed County officials, officers, employees, agencies, departments, commissions boards, offices and all other instrumentalities of the County as well as County vendors, contractors, and lower tier subcontractors, and other parties doing business with the County and/or receiving County funds. The aforementioned shall not be applicable to the County Legislature and the Office of Legislative Budget Review. The Inspector General shall head the Office of the Inspector General. The organization and administration of the Office of the Inspector General shall operate independently in such manner so as to assure that no interference or influence external to the Office of the Inspector General compromises or undermines the integrity, independence, fairness and objectivity of the Inspector General in fulfilling the statutory duties of the office or deters the Inspector General from zealously performing such duties.

Additionally, the Charter reflects the non-partisan nature of the OIG. The Inspector General, who is neither an elected nor political official, is required by Charter provision to comply with the restrictions on political activity applicable to judges, in the Rules of the Chief Administrative Judge of New York State.⁸

Authority, Powers and Functions

To accomplish its mission the County Charter⁹ provides the OIG a set of authorities and powers, including in part:

- Authority to investigate, review, examine and audit past, present and proposed programs, activities, contracts, expenditures, transactions, and projects that are administered, overseen and/or funded in whole or in part by the County, including all aspects of the procurement process, including reviewing proposed contracts to be presented to the County Legislature for approval.
- Authority to recommend remedial actions.
- Authority to receive and investigate complaints.
- Authority to review vendor/contractor databases, filings, and financial disclosure forms.
- Authority to obtain full and immediate access to all County documents and records, and to issue directives requiring their production.
- Authority to receive the full cooperation of the County Executive, all appointed County officials, officers and employees, vendors, contractors, subcontractors, and other parties doing business with the County or receiving County funds, including submitting to interviews, providing sworn statements, and providing documents and records. The Charter also provides a criminal penalty for any person who knowingly interferes in, obstructs, or impedes an Inspector General investigation, audit, review or examination.

⁸ Nassau County Charter § 187 (19).

⁹ See especially Nassau County Charter § 187.

- Authority to subpoena witnesses and to issue subpoenas compelling the production of documents and other information.
- Requirement that the Inspector General be notified as part of the “approval path” for proposed contracts presented to the County Legislature for approval.
- Requirement for OIG to be notified in writing prior to meetings of procurement selection committees, and authority to attend such meetings.
- Requirement that the County Executive promptly notify the Inspector General of possible mismanagement of a contract constituting misuse or loss exceeding \$5,000 in public funds, as well as fraud, theft, bribery or other violations of law which may fall within the Inspector General’s jurisdiction.
- Authority to hire its own staff.

The Charter also imposes various operational requirements on the OIG. These include:

- Establish a hotline to receive complaints from anonymous and identified persons.
- Develop outreach strategies to inform government officials and employees and the public of the authority and responsibilities of the OIG. These include developing an OIG webpage linked to the County’s website and posting information in common areas of County facilities.
- Establish internal policies and conduct its work in accordance with generally accepted government standards and, where applicable, the Principles and Standards for Offices of the Inspector General (also known as the Green Book), published by the Association of Inspectors General.
- Notifying appropriate law enforcement agencies of suspected possible criminal violations of state, federal, or local law.
- Following prescribed procedures for the issuance of certain finalized reports.
- Issuing an annual report (this document).



IG Independence

The Inspector General, who is appointed by super-majority vote of the County Legislature to a four-year term, and removable only for cause by super-majority vote, is not subject to control or supervision by the County Executive. The Inspector General is authorized to exercise any of the powers granted on his or her own initiative.¹⁰

Section 189 of the County Charter requires the County Legislature to have a committee¹¹ for the purpose of maintaining general supervision of and liaison with the OIG. Section 189 also provides that the Inspector General shall meet periodically with representatives of the Legislature to review prior activities and discuss plans and objectives. The Inspector General's authority to conduct investigations, audits, reviews, and examinations does not apply to the Legislature. While the OIG is subject to general supervision by the Legislature, Section 185 of the Charter provides that the OIG shall operate independently such that no interference or influence compromises or undermines the integrity, independence, fairness and objectivity of the Inspector General or deters the Inspector General from zealously performing his or her duties.

The OIG may at times receive requests from members of the Legislature or other officials to explore particular concerns. The OIG has independently assessed such requests in light of its mission and mandate, to determine whether it is appropriate for the office to undertake such inquiry. The OIG has also independently decided the manner, scope and extent of the activities it elects to pursue. In all instances, the OIG conducted its work objectively and impartially, without regard to partisan political considerations.

The Charter requires that investigations conducted by Nassau's OIG comply with the Principles and Standards published by the Association of Inspectors General (AIG).



¹⁰ Nassau County Charter § 187 (8).

¹¹ By law, the membership of the committee consists of the Presiding Officer, the Minority Leader, the chairman of the Finance Committee, and one member each appointed by the Presiding Officer and Minority Leader, respectively.

Term of Office

AIG's Principles and Standards provides that, to establish and maintain the independence of Inspectors General, they should be appointed to a fixed term of office. Moreover, "... AIG believes that the minimum term should be five years and recommends a longer period of seven years to provide stability in the function."¹² Section 189 of the County Charter provides Nassau's Inspector General with a fixed term of office, albeit of four years.

Inspector General Franzese's four-year term began in January 2019 and expired on January 3, 2023. As a result, at this writing the Inspector General is in "holdover" status; still serving but now without a fixed term of office. In March 2023 she was advised that she will remain in place through at least the balance of 2023, and also that no resolution to either reappoint her or to appoint a successor will be introduced for a vote by the Legislature during 2023. Her status after that time is unclear.

The resultant situation is that, although having a fixed term is recognized as an essential underpinning for OIG independence and stability, the Inspector General now serves without the key, basic foundation of a fixed term. While the Inspector General remains committed to her mandated mission, her holdover status is not conducive to the exercise of independent judgment, public confidence in OIG's independence, or the optimal functioning of OIG in crucial things such as staff recruitment and retention, and long-range planning of activities.



¹² Commentary in Model Legislation, Association of Inspectors General website. Also, the model legislation language preceding the commentary provides that: "*The Inspector General is appointed for a term of five years, which may be renewed at the discretion of the appointing authority.*" Moreover, many OIGs do in fact serve terms of five years or more. OIG has raised this point about term length in its prior annual reports.

Our History

The Nassau County Office of the Inspector General (OIG) came into operation four years ago, in January 2019, becoming the first county-wide OIG in New York State.¹³ The Office was established by County legislation enacted on a bi-partisan basis in December 2017.¹⁴ The legislation provided, in part, a fixed term, minimum qualification standards, and enumerated powers and responsibilities, for the Inspector General.

Following a nationwide search in 2018 for Inspector General candidates, Jodi Franzese, then a Senior Inspector General in New York City and former prosecutor in Suffolk County, was selected by a bi-partisan committee. Her appointment was confirmed by unanimous vote of the County Legislature in December 2018, and she took office as the County's first Inspector General on January 3, 2019. The Inspector General thereafter hired OIG's staff members, making the office a fully operational reality.

Impetus for the creation of Nassau's OIG might be traced to July 2015, when the Nassau County District Attorney's Office (DAO) produced its *Special Report on the Nassau County Contracting Process*, documenting significant fraud and corruption vulnerabilities, as well as inefficiencies, in the County's procurement process at that time. The report also detailed several recommendations for reform. One of the key recommendations in the DAO report was the creation of an independent Office of the Inspector General for Nassau County, envisioned as follows:

The Legislature should modify the County Charter to eliminate the position of Commissioner of Investigations due to its history of ineffectiveness,¹⁵ and replace it with an independent and adequately-staffed County Inspector General . . . The Inspector General should be afforded broad investigative

¹³ Monroe County has had an OIG-like Office of Public Integrity since 2016 and Erie County has had a Medicaid Inspector General since 2012.

¹⁴ Nassau County Charter, Article I-C (Sections 185 – 196).

¹⁵ The Commissioner of Investigations was an at-will appointee of the County Executive, having no fixed term or minimum qualifications under the Charter, and not requiring confirmation by the County Legislature. Unlike the IG, the Commissioner's objectives were not well-defined in the Charter (to make examinations "as he or she may deem to be for the best interest of the county") and the Commissioner was not mandated to follow professional standards. As noted above, in 2017 the County Charter was amended to create an Inspector General who was independent of the County Executive. However, notwithstanding the District Attorney's explicit recommendation to abolish the Commissioner of Investigations, that position was not eliminated from the Charter. While the post of Commissioner has remained vacant since the Inspector General's appointment, at this writing the law authorizing a Commissioner remains in the Charter.

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.

.....

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.

As noted earlier, the lineage of the Inspector General concept goes back well before 2015. At its inception, the Nassau County OIG thus became part of an established, robust nationwide OIG community, with delineated professional standards, including those developed under the auspices of the AIG and, at the federal level, the CIGIE.

A major and necessary theme of OIG's first year in 2019 was development and growth from concept to full operation, undertaking an extensive range of start-up activities to ensure that OIG would be properly equipped to fulfill its mission and comply with professional standards.¹⁶

During 2022, OIG in part initiated 41 preliminary inquiries, investigations, or reviews, in addition to other activities including conducting 135 contract reviews, attending five sealed-bid openings, and monitoring 112 meetings of vendor evaluation and technical review committees.

Staffing

The most crucial resource of an OIG is its staff. OIG is comprised of persons in the following positions:

- Inspector General
- Deputy Inspector General / General Counsel
- Assistant Inspectors General
- Investigative Counsel
- Oversight Specialists

In an independent, stand-alone oversight organization of relatively modest size it is essential

¹⁶ E.g., Principles and Standards for Offices of Inspector General ("Green Book"), promulgated by the Association of Inspectors General.

that it be comprised of persons collectively equipped with the variety of knowledge, skills and expertise that its multifaceted function requires. OIG staff members were carefully selected and are well qualified and credentialed to fulfill the many aspects of the OIG's mission. The OIG's 2022 team consisted of credentialed, career professionals whose prior positions and experience reflect a range of pertinent disciplines and relevant skills: investigators, auditors, attorneys/prosecutors, federal agents, deputy inspector general and senior inspector general.

OIG's staff previously worked for a variety of respected governmental institutions including:

- Federal Bureau of Investigation
- Internal Revenue Service, Criminal Investigation Division
- U.S. Department of Transportation, Office of Inspector General
- Metropolitan Transportation Authority, Office of the Inspector General
- New York City Department of Investigation
- New York County District Attorney's Office
- Suffolk County District Attorney's Office
- New York State Comptroller's Office
- Nassau County Comptroller's Office

Additionally, several persons are members of the Association of Inspectors General and/or the Association of Certified Fraud Examiners. OIG's team has completed a wide variety of specialized training, and attained advanced degrees and professional certifications, including:

- Certified Inspector General (CIG)
- Certified Inspector General Auditor (CIGA)
- Certified Inspector General Investigator (CIGI)
- Certified Public Accountant (CPA)
- Certified Fraud Examiner (CFE)
- Certified [Asset] Protection Professional (CPP)
- Admission to New York Bar
- Master's Degree

Complaints

Good government is everyone's business. The OIG relies in part on concerned County employees, officials, vendors, and members of the public – including the readers of this report – to provide us with information regarding possible fraud, waste, abuse, corruption, and misconduct related to County agencies, projects, programs, contracts, operations, or vendors. The OIG is responsible for receiving – and investigating as warranted – complaints, and may also proactively conduct audits, investigations and other reviews, as it deems appropriate. In our first year, 2019, the newly created OIG received in excess of 55 complaints, tips and other contacts, including allegations of misconduct, fraud and other improprieties. During 2020, as public awareness of the OIG grew, the number of contacts more than doubled, to over 130. In 2021, OIG received in excess of 200 contacts, and during 2022, our fourth year, OIG received approximately 230 contacts.

The OIG receives complaints and tips from members of the public, County employees, officials, and vendors via a variety of means including OIG's website, email, letter, telephone Hotline, and walk-in. OIG established these varied means of contact in recognition of the potentially sensitive nature of some of these communications and that the most convenient way of contacting the office may differ by individual need.

Complaints may allege fraud, corruption, waste of funds, abuse of position, or raise other concerns. All complaints and tips received by the OIG are reviewed to determine the appropriate disposition of each. Among other considerations, OIG evaluates each complaint or tip to determine whether it falls within OIG's jurisdiction and gauges its investigative viability. For example, a very vague anonymous complaint might not provide an adequate basis for further inquiry. Given the OIG's need to manage its resources effectively, each complaint is also assessed in terms of its potential magnitude or significance, from individual and/or programmatic standpoints.

Some complaints may result in the initiation of a preliminary inquiry or a full investigation, audit, or other review by OIG. The Inspector General may close some complaints based on initial assessment or after a preliminary inquiry fails to substantiate the allegations or finds no viable issues to pursue. In some instances, the Inspector General may refer the matter to the appropriate County department or other public agency for its appropriate action.

The OIG forwards complaints to other organizations if its evaluation or preliminary inquiry reveals that the issues raised fall outside OIG's jurisdiction or would be more appropriately handled by another entity. During 2022, OIG referred over 70 such complaints to other entities.

Additionally, when OIG receives a complaint about a matter for which OIG does not provide oversight (e.g., federal, state, town or village-level issues), it often provides assistance by trying to help the complainant find a more appropriate entity to contact about their concern.



Examples of issues that should be reported to the OIG are:

- Contractor and vendor fraud (including the submission of inflated or false claims for payment, incomplete or substandard work, or failure to provide deliverables specified by the County).
- Purchasing or bidding irregularities.
- Construction-related fraud on public works.
- Employee misconduct, conflicts-of-interest, or corruption.
- Offer, payment, or acceptance of bribes or gratuities, or solicitation of kickbacks.
- Theft or misappropriation of County property, revenue, or other resources.
- Significant waste of County money or inefficiency.
- False documentation, certifications, licenses, qualifications.
- Whistleblower reprisal.
- Any other activity suggesting wrongdoing or impropriety involving Nassau County projects, programs, operations, grants, funds, revenue, employees, officials, contractors, vendors, or anyone who receives County money.

For more information about making complaints, please see the Frequently Asked Questions section in the Appendix following this report.



Whistleblower Protection

Nassau County's employees and officers are protected by law, as summarized below, against retaliatory personnel action for reporting to the Inspector General (or other specified entities) allegations of improper government action by a County officer, employee, or agent that violates a federal, state, or local law, rule, or regulation.

New York State Civil Service Law, Section 75-b, entitled *Retaliatory Action by Public Employers*, provides, in part, that:

A public employer shall not dismiss or take other disciplinary or other adverse personnel action¹⁷ against a public employee regarding the employee's employment because the employee discloses to a governmental body¹⁸ information:

(i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or

(ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.¹⁹

Nassau County has additional whistleblower provisions, in section 22-4.4 of the County's Administrative Code, entitled *Retaliatory action prohibited* (commonly known as the

¹⁷ "Personnel action" under Section 75-b means "an action affecting compensation, appointment, promotion, transfer, assignment, reinstatement or evaluation of performance."

¹⁸ For purposes of Section 75-b, "Governmental body" means "(I) an officer, employee, agency, department, division, bureau, board, commission, council, authority or other body of a public employer, (ii) employee, committee, member, or commission of the legislative branch of government, (iii) a representative, member or employee of a legislative body of a county, town, village or any other political subdivision or civil division of the state, (iv) a law enforcement agency or any member or employee of a law enforcement agency, or (v) the judiciary or any employee of the judiciary." See Section 75-b for additional pertinent definitions.

¹⁹ There are also certain whistleblower protections for employees in the private sector, under New York Labor Law, Section 740, entitled *Retaliatory action by employers; prohibition*. Of note, the protections of Section 740 were significantly broadened effective January 26, 2022.

County Whistleblower Law). It provides, in part, that:

4. Use of authority or influence prohibited.
 - (a) A government official may not, directly or indirectly, use or attempt to use his or her official authority or influence to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence any individual in order to interfere with such individual's right to disclose information relative to improper government action.
 - (b) Use of official authority or influence shall include:
 - (i) Promising to confer any benefit (such as compensation, grant, contract, license or ruling) or effecting or threatening to effect any reprisal (such as deprivation of any compensation, grant, contract, license or ruling); or
 - (ii) Taking, directing others to take, recommending, processing or approving any personnel action. For purposes of this section, "personnel action" shall mean those actions set forth in paragraph (d) of subdivision (1) of section seventy-five-b of the New York Civil Service Law.

The Administrative Code was amended in 2019 in part to add the Nassau County Inspector General, for purposes of whistleblower protection, to the list of government officials to whom allegations of improper government actions may be reported. That section now provides in part that a County employee who has information about a government action which he or she reasonably believes to be true and reasonably believes constitutes an improper government action, may disclose such information to a supervisor, a Nassau County government official listed in the Code – including the Inspector General, or to a governmental body as defined in New York State Civil Service Law Section 75-b.²⁰

The 2019 amendment of the County Whistleblower Law also removed the general requirement that the County employee must first report the alleged improper action to his or her supervisor or department head, in order to preserve the right to pursue a retaliation claim under Section 75-b of the State Civil Service Law.

County employees who reasonably believe they have been subject to retaliation for disclosing improper governmental action may bring a civil action in a court of competent jurisdiction within one year of the alleged retaliation. Additionally, Section 196 of the County Charter provides a *criminal* penalty for retaliating, or attempting to retaliate, against any person for assisting, communicating or cooperating with the Inspector General.

²⁰ See Nassau County Administrative Code, Section 22-4.4, subdivision 3 (a). Subdivisions 3 (b) and (c) require that certain actions be taken by County officials who receive such information.

Section 196 states:

Any person who:

1. retaliates against, punishes, threatens, harasses, or penalizes, or attempts to retaliate against, punish, threaten, harass, or penalize any person for assisting, communicating or cooperating with the Inspector General; or
2. knowingly interferes, obstructs, impedes or attempts to interfere, obstruct or impede in any investigation, audit, review or examination conducted by the Inspector General, shall be guilty of an unclassified misdemeanor and subject to imprisonment for a term of no longer than one year and a fine of no more than ten thousand dollars, in addition to any other penalty provided by law. Any potential violation of this section shall be referred to the District Attorney for investigation and prosecution.



Duty to Report Corruption and Fraud

As stated in our prior annual reports, OIG believes that key methods for preventing and exposing serious acts of wrongdoing involve not only *protecting* but also affirmatively *encouraging* whistleblowers in the County government, the people who know about the problems. OIG believes this approach is foundational to a comprehensive system for the prevention and detection of conduct that is antithetical to good government. The concept is not novel; it has long existed in other jurisdictions, including [the governments of] both the State and City of New York.

The means of encouraging whistleblowers should include sending a clear message that, for public servants, “looking the other way” is not acceptable behavior in Nassau. OIG believes that each public servant should have an explicit legal duty to report conduct involving corrupt, fraudulent or other unlawful activity affecting the County.

Indeed, the State of New York has recognized and adopted that principle, via a law imposing such affirmative duty on State employees and officers in the agencies under the jurisdiction of the State OIG. New York’s statute, codified at Executive Law § 55(1), provides:

Responsibilities of covered agencies, state officers and employees.

1. Every state officer or employee in a covered agency shall report promptly to the state inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty. Any officer or employee who acts pursuant to this subdivision by reporting to the state inspector general improper governmental action as defined in section seventy-five-b of the civil service law shall not be subject to dismissal, discipline or other adverse personnel action.²¹

²¹ This provision is not unique to New York State’s government. For example, the City of Chicago has a similar statutory requirement for its public servants:

Duty to report corrupt or unlawful activity. Every city employee or official shall report, directly and without undue delay, to the inspector general, any and all information concerning conduct which such employee or official knows or should reasonably know to involve corrupt or other unlawful activity (a) by another city employee or official which concerns such employee’s or official’s employment or office, or (ii) by any person dealing with the city which concerns the person’s dealings with the city. Any employee or official who knowingly fails to report a corrupt

In addition to bringing wrongdoing out of the shadows, such provisions normalize and reduce the stigma of reporting it and conveys the seriousness with which government regards such conduct.

Unlike employees and officers of the State of New York, employees and officers of Nassau County (other than the County Executive) are not generally obligated by law to affirmatively report to the Inspector General their knowledge of corruption, fraud, criminal activity, conflicts of interest or abuse. This is so even though the County's public servants are provided the same protection afforded their State counterparts under the Civil Service law, as well as the additional provisions of the County's whistleblower law and Charter section 196, cited above.

Although the County Charter does require the County Executive to promptly notify the Inspector General of possible fraud, theft, bribery, contract mismanagement and other matters,²² the crucial obligation of individual County employees to likewise report such matters to the Inspector General largely exists not as law but in the form of a 2019 guidance memorandum (from the now-former Deputy County Executive for Compliance). The Countywide Procurement and Compliance Policy additionally provides that public employees and elected officials "having responsibility for contracting procurement" shall "report waste, fraud, abuse and corruption and unethical practices" to the Inspector General. Finally, an executive order (issued by the now-prior County Executive) further requires that any individual who becomes aware of a violation of the "Zero Tolerance" prohibited gifts policy report it to the IG's hotline. While these are significant measures, the scope of each is narrow, and in OIG's view they do not provide the gravity or permanence of a statutory mandate, let alone cite a penalty for noncompliance.

or unlawful activity as required in this section shall be subject to employment sanctions, including discharge, in accordance with procedures under which the employee may otherwise be disciplined.

Municipal Code § 2-156-018.

²² Nassau County Charter § 187 (5) provides in part that:

The County Executive shall promptly notify the Inspector General of possible mismanagement of a contract constituting misuse or loss exceeding \$5,000 in public funds, fraud, theft, bribery, or other violations of law which appears to fall within the jurisdiction of the Inspector General, and may notify the Inspector General of any other conduct which may fall within the Inspector Generals (sic) jurisdiction.

Pursuant to this provision and a supplemental directive issued by the Inspector General in accordance with § 187 (5), in 2019 the Deputy County Executive for Compliance issued a guidance memorandum to County employees that they must (likewise) report such matters to the Inspector General. While clearly an appropriate and positive measure complying with § 187 (5) and the IG's directive, this structure lacks the force of a law and so has neither the permanence nor gravity of a statute, particularly one having a stated penalty for non-compliance.

The only other affirmative duty under law to report wrongdoing to the Inspector General is a limited one appearing in the County whistleblower law. It provides in sum that any county government official *receiving information from* a county employee concerning improper government action *shall review it*, and:

if such review indicates an apparent improper government action, take appropriate corrective measures *and where appropriate, refer such information* to the appropriate investigative authority . . . [emphases added]²³

OIG believes that the responsibility of a county official receiving information concerning improper government action should be *to promptly notify* the Inspector General or other appropriate investigative authority of the information.

Overall, OIG suggests that Nassau County would benefit from strengthening its reporting requirements; codifying them into a law placing an affirmative duty on the County's public servants to report information concerning fraud and corruption.²⁴ New York State law provides a model worthy of consideration.



²³ Nassau County Administrative Code § 22-4.4 (3)(b). The Inspector General is included among the appropriate investigative authorities in a non-exhaustive list following that text.

²⁴ In adopting such law, it would also be important to ensure that whistleblower protection is broad enough to match the scope of all the information required to be reported, as it might extend beyond “improper government action,” e.g., fraud committed by vendors. It would also be essential to ensure that all County public servants are made aware of their disclosure obligations.

Investigations

The OIG conducts investigations into the conduct of County functions, transactions, contracts, programs, vendors, officials, employees, and departments. They may concern potential violations of law or policies, or other possible irregularities. Unlike audits, which are typically conducted of operations or programs, and are usually general or systemic in nature, investigations are often more specific inquiries into particular actions, events or allegations or concerns of wrongdoing or deficiency, e.g., fraud, corruption, misconduct, waste, or abuse.

Investigations arise from a variety of sources. Some investigations are initiated based upon complaints or tips, or stem from other OIG activities, while others may arise on a proactive basis as determined by the OIG based on inherent risks or other factors. The OIG may also receive referrals or requests for investigation from the Legislature, the Board of Ethics, the County Executive, the Comptroller, or other officials. Some investigations may be conducted jointly with other investigative or law enforcement agencies.

Irrespective of origin, the OIG independently determined what and how it would investigate, and conducted its work objectively and impartially. The objective of all OIG investigations is to gather facts, to seek the truth.

The Charter requires that investigations conducted by Nassau's OIG comply with the Principles and Standards published by the Association of Inspectors General (AIG) (Green Book).

The duration of a given investigation may depend on a variety of factors, including the nature of the subject matter, the number of interviews to be conducted, and the types and quantity of documents that must be obtained and analyzed.

Investigative Outcomes

OIG investigations can result, where warranted (e.g., where there is sufficient evidence of wrongdoing or noncompliance), in criminal or non-criminal referrals or recommendations for possible remedial action, administrative sanctions, civil enforcement, criminal charges, or a combination of such outcomes. Investigations leading to administrative sanctions may involve violations of County codes, rules, policies or procedures, and/or waste, abuse or misconduct. Investigations of allegations of administrative misconduct might result in any of the following status determinations by OIG:

- **Substantiated.** The allegations are sustained/validated. There is sufficient evidence to justify a reasonable conclusion that the actions in question occurred and that there were violations of law, policy, rule, or contract.

- **Partially Substantiated.** There is sufficient evidence to justify a reasonable conclusion that (1) a portion but not all of the allegations occurred, or (2) the alleged actions did occur but not to the extent alleged.
- **Unsubstantiated.** The allegations are not proven. There is insufficient evidence to conclusively prove or disprove the allegations.
- **Unfounded.** There is sufficient evidence to justify a reasonable conclusion that (1) the alleged actions did not occur, or (2) that there were no identified violations of law, policy, rule, or contract.

It should be noted that even when OIG determines allegations to be substantiated, it cannot impose sanctions, take disciplinary or remedial actions, or commence prosecutions. OIG can only provide information and recommendations to the organizations that are authorized to do so, the decision-makers.

Where OIG suspects a possible criminal violation of a state, federal, or local law, OIG will notify appropriate law enforcement officials.

OIG does not publicly report on ongoing investigations or prosecutions.

OIG issues reports and makes recommendations to the Legislators, County Executive, or other officials as appropriate.



Audit

OIGs may conduct performance audits, also known as program audits, and financial audits. A performance audit focuses on programs, organizations, or activities, in terms of such things as their effectiveness, economy, transparency, and internal controls/risk management. A financial audit may look at the use of funds for programs and operations, e.g., to examine the costs involved and how the money was spent and accounted for. Areas selected for audit can arise from a variety of bases, including risk factors, allegations, referrals, and as follow-up to, or spin-off from, other OIG work.

Audits typically have four phases: preliminary audit survey, fieldwork/audit verification, draft report preparation, and final report preparation/issuance. OIG audit reports may recommend corrective measures or improvements. Audit reports containing findings and recommendations will typically be directed in draft form to the County Executive or other appropriate management officials for response and provided in final form to the Legislature and other officials as appropriate.

Reviews

OIG conducts various types of reviews where a full audit or investigation is inappropriate or unnecessary and which may facilitate more immediate and timely feedback to decisionmakers. Review types include, but are not limited to, screening of proposed vendor contract awards and revenue agreements, inspections as to whether operations/programs are following established policies, procedures and guidelines, and evaluations of internal controls, the use of County funds, or the effectiveness of operations/programs in meeting goals and objectives.

When OIG staff completes a review project, the Inspector General may issue a letter, memorandum, or report to appropriate officials describing observations/findings and/or providing recommendations for remedial action, reforms to prevent future problems, or steps to improve effectiveness, accountability or transparency.

Procurement/Contracting Oversight Activities

Procurement, for purposes of this report, may be defined as the process by which goods and services are selected and acquired by the County for the benefit of the public. This includes the use of formal contracts as well as the issuance of purchase orders. As the County's procurement activities involve the expenditure of public funds, it is important that purchasing/contracting reflect the best interests of the County. The County's processes and practices should be transparent and guided by considerations of competition, quality, value and price, and, of course, compliance with law.

While the Nassau County OIG shares the general oversight responsibilities common to most OIGs in the nation – to detect and prevent waste, fraud, abuse and illegal acts; to promote transparency, efficiency and integrity – the County Charter places particular emphasis on the OIG pursuing those responsibilities within the specific context of the County's contracting and procurement processes. To accomplish those ends, the OIG's oversight of the County's procurement/contracting activities may take a wide number of forms, including but not limited to:

- Reviewing contracts/purchases/grants and proposed contracts/purchases/grants, e.g., for compliance, transparency, and justification of the award.
- Examining vendors' declarations in their Business History and Principal Questionnaire forms for accuracy, completeness, and information of concern, including matters potentially impacting business integrity.
- Providing Contract Review Statements and Contract Review Reports to the County Legislature, for items submitted by the Administration for approval.
- Reviewing employee financial disclosure statements, contractor political contributions, and lobbying disclosures.
- Reviewing processes followed, e.g., for efficiency, effectiveness, compliance, and transparency.
- Observing the conduct of vendor selection (evaluation) committee meetings.
- Reviewing records of decision-making, e.g., for transparency and sufficiency.
- Reviewing invoices and payment applications.
- Reviewing contract specifications and change order requests.

- Reviewing vendor evaluations.
- Monitoring ongoing projects.
- Conducting site visits at locations where a vendor is performing or has performed services.
- Examining deliverables to verify specifications have been met and correct quantities have been provided.
- Reviewing materials-testing results/certifications.
- Reviewing reports of integrity monitors and regulatory agency records relative to vendors or prospective vendors.
- Notifying the Administration and/or Legislature of the discovery of potentially adverse information about current or prospective vendors.

Conducting investigations, audits, preliminary inquiries, and other reviews as deemed appropriate.

Screening of Proposed Contract Awards

During 2022, OIG, as part of its oversight role, screened all proposed contracts and amendments prior to their approval by the Legislature. OIG independently selected 135 of these for further scrutiny. OIG provided to the Legislature approximately 90 Contract Review Statements, which summarized the results of particular reviews.

Vendor Disclosures

The standard for contract award under County procurement policy is in part whether the vendor is “responsible.” A responsible vendor is one which has the capability in all respects to fully perform the contract requirements and the business integrity to justify the award of public tax dollars. In furtherance of the County’s responsibility determination process, prospective vendors are required to submit to the Administration disclosure documents including a Business History questionnaire form (BHF), and the principals of the vendor organizations must each submit an individual Principal Questionnaire Form (PQF). It is the responsibility of the various procuring departments to review and assess these disclosures.²⁵

²⁵ While OIG reviews proposed contracts and their disclosure forms on a spot-check, oversight basis, the determination of vendor responsibility, including the task of vendor vetting, resides with the respective procuring departments.

Where OIG detected in its reviews potential matters of concern, it apprised the Administration and/or the Legislature. These concerns included apparent omissions and/or discrepancies within vendors' BHF's and/or individual PQFs, or what appeared to be adverse information, e.g.:

- One or more principals of a proposed vendor failed to disclose their position(s) in other business entities (29 instances).
- Proposed vendor failed to disclose sharing space with another entity (16 instances).
- Proposed vendor failed to disclose one or more principals (14 instances).
- Proposed vendor failed to disclose political contributions (13 instances).
- Proposed vendor not registered to do business in the State of New York (8 instances).
- Proposed vendor submitted an expired insurance certificate (7 instances).
- Proposed vendor failed to disclose affiliated business(es) (3 instances).

As is apparent, some of these types of matters were reoccurring during 2022.

In other instances, OIG's work uncovered adverse information that proposed vendors had not disclosed to the County. Some examples of this in 2022 were:

- An affiliate of a proposed vendor had been debarred by the New York State Worker's Compensation Board.
- A principal of a proposed vendor had an active tax lien.
- A principal of a proposed vendor had a 2019 New York State tax warrant.
- A 2016 guilty plea by the Chief Financial Officer of a proposed vendor to the crime of Third Degree Conspiracy to Commit Official Misconduct (the proposed vendor did not identify this officer in its disclosures to the County).
- A proposed vendor who had been suspended by the New York State Gaming Commission.

In each of the foregoing instances, the Administration subsequently advised OIG that the issues were addressed, or the Legislative item was withdrawn or tabled.

Insufficient Documentation

OIG also reported on other issues in some of the Legislative packages submitted by the procuring departments, including:

- Sole source justification not provided.
- Low bidder participation memorandum not provided.
- Staff Summary missing relevant information.

The issues were subsequently resolved, or the item was withdrawn.

Procurement/Contracting Monitoring

General Observations

As we first related in our inaugural annual report, the District Attorney's 2015 *Special Report on the Nassau County Contracting Process* described "serious systemic deficiencies that require the immediate attention of the County Executive and Legislature to protect taxpayers and prevent future scandal"²⁶ and noted in part that "One of the greatest vulnerabilities of the County is its predominately decentralized procurement process."

It is apparent from OIG's four years of observation that although the County still has key procurement functions being performed across various departments, it also has made important improvements since the state of affairs detailed in the District Attorney's report. These include creation of the position of Chief Procurement Officer (CPO) in part to establish and ensure compliance with uniform procurement policies and standardized procedures, as well as the issuance of a Countywide Procurement and Compliance Policy (updated periodically), a series of supplemental policy enhancements, and the adoption of the Vendor Code of Ethics. A number of the policy enhancements, as well as the Vendor Code, were recommended by OIG.

²⁶ The report's executive summary also commented in part that: "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."

Moreover, for the last four years OIG has been providing independent oversight of the County's contracting/procurement processes, via a range of activities as described elsewhere in this report.²⁷

Selection Committee Oversight

OIG's monitoring of procurement-related activity during 2022 included attending five sealed bid openings and 98 selection committee meetings conducted as part of RFP and other evaluation processes in various procuring departments.²⁸ Where OIG had concerns about the conduct of a selection committee meeting it observed, it brought them to the attention of the CPO for his information and appropriate action.

Oversight of On Call Contracts – Task Order Awards

The Department of Public Works (DPW) awards "on-call" contracts. An on-call contract is a master agreement in which a consultant firm is retained to provide DPW with professional services in a given technical category, such as design services or construction management, on an as-needed basis. These contracts are typically of long duration and involve significant amounts of money.

Task orders are issued to firms that have been awarded such contracts. Task orders are awarded to these firms via a "mini-bid" competitive selection process. While the on-call contracts are subject to Legislative approval, the ensuing task order awards issued under those contracts do not come before the Legislature for approval.

The mini-bid selection process entails the use of technical review committee (TRC) meetings. A technical review committee is a group of DPW personnel, sometimes assisted by consultant staff, that reviews the technical and cost proposals received for a given task order and selects, on a "best value" basis, the proposing firm(s) which will be assigned the task order.

In December 2021, the Presiding Officer of the Legislature requested that the DPW Commissioner ensure that OIG henceforth be afforded the opportunity to monitor the task order award process. This was done, and in 2022 OIG accordingly expanded its oversight

²⁷ OIG notes however, that the senior-level post of Deputy County Executive for Compliance, first created three administrations ago, and cited in the District Attorney's 2015 report, has (for the second time) been eliminated. It is OIG's understanding that the duties of that executive post have been added to those of the CPO, a position apparently of lower rank and authority, and, despite the added responsibility, has less staff now than in the past.

²⁸ Selection committees are also known as evaluation committees.

activities to include observing TRC meetings, similar to OIG’s monitoring of contract selection committee meetings. OIG attended 14 TRC meetings during 2022.

Capital Project Oversight

Review of Very Large Proposed Change Order for the Family and Matrimonial Courthouse Project

Project Background

Among the matters that OIG monitored during 2022 was Phase 2 of the ongoing Family and Matrimonial Courthouse (FMC) project, one of Nassau County’s largest capital projects. The scope of this project is the conversion of a 239,000 square foot County-owned office building in Garden City, formerly used by the Department of Social Services, into a 255,000 square foot court complex. When completed, the Family Court will consist of 23 courtrooms and hearing rooms and the Matrimonial Center will consist of 13 courtrooms and hearing rooms. Also included in the project is a Family Justice Center which will occupy part of the first floor and basement, a sally port, holding facilities, judicial chambers, auxiliary offices, and interview rooms.

A general contractor was awarded an \$85.6 million contract for Phase 2, receiving the notice-to-proceed in April 2021.²⁹ Phase 2, currently in progress, includes a complete interior fit-out and new architectural, structural, HVAC, mechanical, electrical, and plumbing work, as well as vertical transportation, and fire protection and security systems. Phase 2 work also includes site improvements, such as new sidewalks, curbs, paving, drainage, and landscaping. The originally scheduled contract completion date was October 2022.

Project Cost and Schedule

At the time of OIG’s review, the construction management firm’s most recent update reported that, “Issues have been identified that will impact project cost and schedule” and projected that the completion date for the courthouse would be delayed by 675 calendar days. The report listed a number of causal issues, including site conditions, incomplete and/or deficient Phase 1 work, and design errors or omissions. The report noted that these

²⁹ The preceding Phase One involved work on the building core and shell, including interior demolition asbestos abatement, façade reconstruction, structural modifications, roof replacement, and drainage improvements.

issues would be addressed through the development and issuance of supplemental bulletins (i.e., specifications for extra work).³⁰

Supplemental bulletins (also called supplementary bulletins) customarily form the basis for change orders that Department of Public Works (DPW) issues to the general contractor. The issuance of change orders for the performance of work not covered by the original project specifications is a standard construction industry practice.

As of October 2022, DPW had issued or proposed 25 change orders for the FMC project. These 25 change orders totaled over \$10.4 million³¹ in extra work, raising the construction cost to over \$96 million. As of the preparation of this summary in first quarter 2023, there are now 33 change orders, totaling nearly \$17 million, thereby raising the total Phase 2 construction cost from \$85.6 million to presently over \$102.5 million.³²

The Change Order Process

According to the Associated General Contractors of America, the term *change order* refers to:

an official change of any kind in the original scope of work or terms of a construction contract agreed to by the owner, contractor, and project designer. Change orders include work that must be added or removed from the original contract in order to best serve the finished product of a project.

In the experience of OIG staff, it is standard practice that project owners (such as Nassau County) issue change orders for specific identified needs. Such needs are supported by documented justification and independent cost estimates, and are subject to a delineated approval process. Conversely, change orders are typically not issued for undetermined, unknown, or non-specific purposes. For example, one New York State agency's guidance regarding change orders states that there must be sufficient detail and technical data to denote:

³⁰ Information from the construction management firm's Monthly Project Progress Report 17, September 30, 2022. Subsequently, per CPM Update No. 19 Review Report of January 24, 2023, the projected completion delay had grown; the projected completion date was shown as May 19, 2025, 947 calendar days later than the original contract completion date of October 15, 2022.

³¹ \$10,429,395.55.

³² These figures exclude the proposed Change Order #26 discussed in this summary (after withdrawing the proposed Change Order 26, DPW re-used the number 26 to issue a different change order having a defined scope, in the amount of \$342,000).

- what is being done,
- why it is being done,
- the cost of the change order,
- the revised contract total [dollar amount].³³

In order to ensure that change orders are appropriate, fall within the project scope, and are completed at the lowest possible cost, Nassau County, like other governmental organizations, has developed a change order approval process. This process requires the generation of both internal and third-party cost estimates, approvals by the Department of Public Works (DPW) and other County officials, and review by a change order committee comprised of representatives from the general contractor, County consultants, DPW, the County Attorney's office, and the County Comptroller's Office.

Proposed Very Large Change Order

In monitoring the FMC project, OIG learned from the County's program management consultant that DPW planned to consolidate multiple elements of FMC extra work into one very large new change order. The consultant explained that this approach would obviate the need to process these elements as multiple, individual change orders.

OIG accordingly obtained and reviewed the proposed change order (then referred to as Change Order 26) and discovered that it was in the amount of \$25 million, a sum of considerable magnitude which would constitute a very substantial increase to an \$86 million contract.³⁴ OIG observed that the proposed mega-change order lacked basic, essential information, such as detail regarding the actual cost and in some cases the very nature of the extra work that would be covered.

OIG had observed that the County's other change orders consisted of document packages called supplemental bulletins. Supplemental bulletins specify precisely what additional work is to be done, and also document that the extra work's cost was both independently estimated and then negotiated with the general contractor. The negotiated price of the supplemental bulletin(s) becomes the total price of the change order.

Proposed change orders are typically accompanied by cover sheets, which specify the supplemental bulletin number(s) and price(s) negotiated with the general contractor for the performance of each bulletin's work. In this instance, the proposed \$25 million change

³³ New York State Department of Education, Facilities Planning. Accessed March 17, 2023 at https://www.p12.nysed.gov/facplan/articles/D01_change_orders.html

³⁴ It would also be the largest change order to date on the project, by a wide margin, exceeding the total value of all the prior issued and proposed change orders combined.

order cover sheet referenced *no* supplemental bulletins whatsoever. The cover sheet stated only: “Increase Contract Allowance No. 2 - Unforeseen Conditions” by \$25 million.

The body of the proposed change order’s package included tables that listed multiple work items, but some of the work items were not linked to supplemental bulletins. While many of the other work items did reference supplemental bulletins, the only cost estimates for many of these bulletins were those submitted by the general contractor itself. This indicated to OIG that these “supplemental bulletins” had not yet gone through the normal estimation and negotiation processes.

OIG had observed that in the County’s other change order packages, there was a Comparison Summary Sheet showing, for each supplemental bulletin, four dollar amounts: the general contractor’s price quote, a consultant’s cost estimate,³⁵ an independent cost estimate,³⁶ and the final negotiated price of the extra work. By contrast, the Comparison Summary Sheet for Change Order 26 lacked crucial information about the scope of the change order³⁷ and did not identify the general contractor’s price quotes, the consultant cost estimates, or the independent estimates.³⁸ Rather, it contained a single column of pricing bearing the unusual label of “DPW,” which merely displayed lump sum dollar amounts, by category, with no reference to specific bulletins.

These deviations suggested to OIG that: (1) the normal change order process had not been followed; (2) there was no evidence of independent cost estimates; and (3) there was no evidence of price negotiations. OIG, in analyzing other change orders, had observed that their finalized supplemental bulletins were usually for negotiated prices, lower than the general contractor’s price quote. As such, for example, the tables provided in Change Order 26 could be overstating the cost of the prospective extra work and thus the extent of additional funds that would actually be needed. Given the paucity of information, it was unclear whether DPW intended to accept the contractor’s price quotes.

OIG also had other concerns as to how the amount of \$25 million had been determined. OIG discovered that some of the work items in the tables had already been included in

³⁵ The consultant’s estimate is generated by the construction management firm, or in some cases by the project management consultant.

³⁶ The independent cost estimate, also known as a third-party estimate, is generated by the architectural design firm.

³⁷ The sheet was organized not by specific supplemental bulletins but merely by classification categories, which provide no specifics about the work itself.

³⁸ Columns for contract and consultant estimates were present but populated by “N/A.” The usual column for independent estimate was absent.

earlier change orders. Thus, the total dollar amount sought in Change Order 26 partly reflected double-counting; the \$25 million request was based in part on over \$3 million³⁹ in costs that were associated with preexisting change orders.

Further, OIG learned that this large sum of additional money was intended to be added to the contract's existing \$300,000 "allowance" for "unforeseen conditions;" an addition on a massive scale – to be drawn down from this allowance as needed.⁴⁰ To OIG's understanding, it is neither customary nor appropriate to use change orders as a means of funding for non-specific purposes or future contingencies. This is because change orders arise from recognized needs for specific extra work to be done, whereas allowances and contingencies are used to fund potential costs for as-yet undetermined needs.⁴¹

OIG was concerned not only with the deviations from normal practice but with the potential impact of Change Order 26 on economy, accountability and transparency. As noted, change orders normally go through an established review and approval process to ensure that the change is necessary, is within the project scope, and that the County is getting the additional work at the lowest possible price. By contrast, neither the contract nor County procedures set out a similar process governing allowance drawdowns. For example, there are no committees to review and approve allowance drawdowns. It was thus unclear to OIG whether the drawdowns from the prospective \$25 million allowance would be subject to the same safeguards and controls as individual change orders would be. Indeed, it was unclear what safeguards and controls, if any, would govern the expenditure of the \$25 million.

Notification to County Attorney's Office

In November 2022, OIG accordingly notified the County Attorney's Office of its observations and concerns regarding proposed Change Order 26, including its lack of specificity and documentation, the deviations from standard practice, and the potential lack of procedural safeguards, all particularly important in light of its magnitude. OIG

³⁹ \$3,192,176.02.

⁴⁰ The Change Order 26 memorandum refers to the allowance as being \$200,000. However, the contract documents indicate the allowance amount is \$300,000. In any event, as of October 2022, \$96,000 had already been drawn down from the allowance.

⁴¹ Construction contracts may contain "allowances" for the cost of specified, foreseeable circumstances or conditions that might arise, thus reserving funds to be available *in the event* that these pre-specified types of conditions do in fact occur.

A construction contract might also set aside a predetermined percentage of the contract amount for "contingencies." The contingency amount would be used for "unknown unknowns," that is, to cover *unexpected* costs of *unforeseen* conditions or circumstances which might arise.

also conveyed its understanding that it was improper to use a change order to increase a contract allowance. The County Attorney's Office concurred that the proposed change order did not comport with the standard format for such requests, and also advised that adding \$25 million to the contract would necessitate a contract modification that would have to go before the County Legislature for approval.

Subsequent to OIG's notification, the change order committee did not approve Change Order 26. DPW withdrew the proposed change order and returned to its normal practice of submitting change orders based on supplemental bulletins which had gone through the normal estimation and negotiation processes.

Other Matters

Review of Proposed Settlement's Impact on Procurement Process

OIG submitted an Item Review Statement to apprise the Legislature and the Administration of its concerns about the potential collateral impact of a proposed stipulation of settlement concerning a license amendment, upon the County's contracting/procurement processes.

While OIG understood that the Administration had determined that it was preferable to reach a settlement rather than continuing litigation, OIG reported several collateral concerns arising from the specific terms of the settlement. To OIG's understanding, the gist of the litigation giving rise to the proposed settlement was that a former licensee sought judicial relief to put it back into the position of receiving a two-year extension of its license agreement; an agreement that the County had sought to terminate for convenience in 2019. It appeared that under the proposed settlement, the licensee would receive an extension of not two years but a five-year term, with an option for a second five-year term that could be awarded without a competitive process.

OIG noted that competition is the preferred method for government to acquire services. Competition in the realm of revenue agreements provides an important means to maximize revenue as well as quality of service, in the best interests of the County. In this case, however, the proposed settlement could have resulted in a non-competitive award of the operation of a certain park's facilities to the licensee for at least five, and potentially ten, years, a significant duration.

OIG also noted that the total impact on competition would apparently not be limited to that park's facilities, as the proposed amendment would also grant the licensee vending rights at all County Parks facilities and all other County properties. Not only would this award of rights be granted outside of a competitive process, but it appeared to OIG that in so

doing the County would have to terminate its existing agreement with a vending company, years before its expiration date.

Moreover, that standing six-year agreement (having four optional one-year extensions) had been awarded following a competitive process. OIG noted that the Contract Summary for that agreement submitted to the Legislature in 2020 explained that a selection committee had evaluated the proposals according to criteria set out in the solicitation, asked detailed questions of the prospective vendors, and concluded that the awardee “*was chosen as the County’s vending operator as they have vast experience in vending, provide transparent reporting, received excellent references, and offered the County the highest percentage commission on sales.*”

As the former licensee had been one of the unsuccessful bidders in that process, in OIG’s view the settlement would have essentially changed the competitive outcome, and the County could potentially face litigation from the incumbent vending awardee, if it were to terminate the competitively procured, vetted contract.

Even if no litigation ensued from upending the 2020 award and non-competitively granting a multi-year award to a losing proposer, OIG was concerned that this action – especially if viewed in combination with the non-competitive award to operate the park’s facilities – could have a chilling effect on future competition for the County’s revenue agreements, and possibly even other contracts; i.e., discouraging the submission of proposals and thus impeding the County’s efforts to seek best value.

Further, it appeared to OIG that other provisions in the settlement agreement⁴² might similarly impact another competitively-awarded contract; a five-year catering contract (having an optional three-year extension). In light of all of the foregoing, OIG was concerned that the proposed settlement might erode public confidence in the County’s commitment to competitive process and a level playing field, disincentivizing future proposers.

OIG additionally expressed concern that the proposed settlement might impact the County’s adherence to the crucial process for determining vendor “responsibility.”⁴³ The proposed stipulation of settlement provided that the licensee “. . . *will be deemed in good*

⁴² The County facilities and parks concessions granted under the license agreement would include “all public and County picnic catering at County Parks Facilities” and “all public and County special event catering.”

⁴³ E.g., “*contracts shall be awarded to responsible prospective contractors only.*” Countywide Procurement & Compliance Policy # CE-01-2021, Section III I, at page 28. “*A vendor is deemed responsible to be awarded a contract when it has demonstrated that it has the integrity and capacity to perform the required services on behalf of the County.*” *Ibid*, at Appendix E.

standing and eligible to bid on, and be awarded, future solicitations and procurements (i.e., RFPs, bids etc.) by the County.” It was unclear to OIG how this provision aligned with established County policy that vendor eligibility for contract award is to be determined prior to each award, via a prescribed, documented responsibility-review process.⁴⁴

In OIG’s view, the above-quoted phrase could be interpreted as presumptively declaring the licensee to be a responsible contractor and it was unclear to OIG to what extent the County’s responsibility determination process would or could be followed, as to the licensee. In OIG’s assessment such declaration could: (1) effectively circumvent the County’s delineated vetting process for determining the responsibility of the companies it does business with, and (2) arguably call into question the County’s future ability to determine that the licensee is not then a responsible party, should such unfortunate circumstance ever arise. Moreover, OIG was concerned that the proposed provision might set a precedent eroding the existing responsibility determination process and/or raising fairness issues as to the treatment of the County’s other licensees/vendors.

OIG also observed that the proposed stipulation indicated the existence of outstanding issues but did not resolve them or require their resolution: “... *the Parties will meet with the County Comptroller’s office in an effort to resolve any outstanding issues raised in past reports.*” As no meeting date or deadline was specified, it appeared possible that the County would go forward with an extension for five and potentially up to 10 years, without prior resolution of the issues, or a guarantee that the issues would ever be resolved, absent further litigation.

Following the issuance of OIG’s Review Statement, the Administration conducted a streamlined competitive process for concession services at County parks and recreation facilities. The Administration subsequently put forward for Legislative approval a new settlement and a new contract, resolving the issues identified by OIG.

Review of 4 ½ Year Retroactive Contract Amendment

Background

The longest retroactive contract time extension that OIG recalls was submitted for Legislative approval in 2022. This was a proposed term extension of four years, six months, for an agreement between the County Attorney’s Office and a law firm that has

⁴⁴ To OIG’s knowledge the Administration had not yet undertaken the established vetting process in connection with the proposed amendment and extension.

been providing legal services as special counsel to the county's Board of Ethics.⁴⁵ The proposed amendment was entirely retroactive, spanning January 31, 2018 through July 31, 2022 (a date which had then already passed). In addition to the time extension, the amendment increased the dollar amount of the contract by \$60,000 to compensate special counsel for services already provided during that period.

Given the magnitude of the retroactive time extension which the Legislature would be asked to approve, OIG reviewed the underlying circumstances, provided a draft Contract Review Statement to the County Attorney's Office for comment, and thereafter provided the Legislature with the information obtained.

OIG reported that the need for a 4½ year retroactive term resulted from a situation in which the special counsel had been allowed to continue to provide services, year after year, without a contract in place. When the original contract of a decade ago expired, rather than the County periodically entering into new agreements arising from competitive selection processes, it was followed by two successive extensions, and then finally, in 2018, by no contract at all.

The contractual lapse after January 2018, coupled with the continued use of special counsel well beyond that point, and the failure to sooner seek Legislative approval for either another extension or a new contract, made the request for a multi-year retroactive amendment inevitable.

History

During the three years provided by the original base contract and its two extensions, the Administration of that time did not issue a competitive solicitation to secure services beyond the expiration in January 2015. This was so even though the agreement ending date was known and an ongoing need for services was presumably foreseeable.

In November 2015, when the contract had already expired by nearly a year, the Administration of that era submitted to the Legislature a proposed one-year, mostly retroactive amendment, to extend the contract through January 2016. A few months later, the Administration of that time proposed, and the Legislature approved, another extension, this for a period of two years, running through January 2018. Again, during that two-year extension, the Administration of that era apparently did not issue a competitive solicitation to secure services beyond January 2018, even though the agreement ending date was known and an ongoing need for services was presumably foreseeable.

⁴⁵ The terms agreement and contract are used interchangeably for this summary.

After that latest extension expired in January 2018, special counsel was allowed to continue to provide its services without a contract in place. There were three attempts by the County Attorney's Office under the prior Administration to employ a competitive selection process, but as of the time of OIG's review none of the solicitations had resulted in a new contract award.

County procurement policy appropriately recognizes that "[c]ontract extensions are not intended to avoid the issuance of new solicitations for recurring County needs." In this case, the history showed that the provision of counsel to the Board of Ethics has been treated as an ongoing need, and so a new contract could and should have been addressed in advance – via a timely competitive selection process. Moreover, under law and policy, competition is the preferred method for government to acquire goods and services. Unfortunately, the combination of extensions and retroactive periods to cover lapses resulted in an ongoing departure from the competitive process, leaving the incumbent vendor in place for years without a competitive award and in significant delay in payment for services.

Advisement

As the proposed amendment would bring the agreement period "current" only up through a date that had already passed, it appeared that the proposed retroactive amendment might need to be followed by yet another retroactive amendment, to cover the period after July 2022 and the time needed to complete a competitive RFP process.

OIG therefore advised that if the County intended to continue to hire counsel for the Board of Ethics it should do so via competitive process commenced forthwith, and should not entertain any further retroactive extensions of the instant agreement. To prevent future problems, OIG also advised that the Administration should implement an effective process to ensure that successor agreements are timely finalized and submitted for Legislative approval before expiring agreements lapse.

Outcome

The County Attorney's Office concurred with OIG's recommendations and advised that it would not use the services of special counsel prior to the award of a new, competitively selected contract and would expeditiously convene a selection committee meeting. The selection committee convened shortly thereafter and selected an awardee. The Legislature subsequently approved the four-and-a-half-year retroactive (through July 31, 2022) amendment. At this writing a proposed new five-year agreement, commencing November 1, 2022, is pending Legislative approval.

Policy-&-Procedure for Implementing the State Procurement Lobbying Law

Background

New York State Finance Law §§ 139-j and 139-k, commonly known as the Procurement Lobbying Law, is designed to limit attempts to influence procurements and contracts once the procurement process by a state or local government agency has begun. Section 139-j requires, in part, that an agency designate a single point of contact for the procurement during the procurement's restricted period. The restricted period begins with the earliest posting (public advertisement) of a procurement (solicitation) and ends when the contract is awarded and duly approved.

The law also provides, in part, that an impermissible contact is one in which an offeror (e.g., a vendor or a party acting on behalf of an offeror) communicates with a government entity employee who is not the designated point of contact, during the restricted period, "under circumstances where a reasonable person would infer that the communication was intended to influence the government entity's conduct or decision regarding the governmental procurement."⁴⁶

The business community is obligated to make only permissible contacts during the restricted period and may only contact those persons who are designated by the governmental entity regarding a government procurement.⁴⁷ An offeror's knowing and willful violation of the Procurement Lobbying Law may result in a determination of non-responsibility for that vendor. Further, an offeror can be debarred for four years for a second violation within a four-year period.

State Finance Law §§ 139-j and 139-k imposes a number of requirements on governmental entities. State Finance Law § 139-k, in part, requires government agencies to make a record of all contacts with offerors about a procurement that a reasonable person would infer are intended to influence the government entity's conduct or decision regarding the procurement. Governmental entities in effect must adopt written policies and guidelines outlining the implementation of State Finance Law §§ 139-j and 139-k,⁴⁸ including, for

⁴⁶ New York Finance Law § 139-k (1)(c); *see also* § 139-j (c); § 139-j (3).

⁴⁷ The law also identifies certain types of permissible contacts that need not go through the designated point of contact. *See* State Finance Law § 139-j (3)(a).

⁴⁸ State Finance Law § 139-j, also requires government agencies to incorporate in their solicitation of proposals or bid documents or specifications for all procurement contracts, a summary of the policy and prohibitions regarding permissible contacts, and copies of rules and regulations and applicable entity guidelines and procedures regarding permissible contacts. Section 139-j further requires each government

example, the establishment of a process for reviewing allegations of violations of the permissible contact provisions, and for the imposition of sanctions if violations are found.⁴⁹

OIG observed that many governmental entities had promulgated written policies and procedures to effectuate these sections of the State Finance Law. When OIG checked to ascertain whether Nassau County had similar provisions, it discovered that while the County had some pertinent procurement policy provisions it did not have a comprehensive set of implementation procedures fully addressing the range of legal requirements of §§ 139-j and 139-k.

OIG accordingly brought the foregoing information, including sample provisions, to the attention of the Chief Procurement Officer, and recommended that the Administration promulgate and train the appropriate persons in guidelines for implementation of Finance Law §§ 139-j and 139-k. OIG has been advised that a set of draft guidelines are presently under review by the County Attorney's Office.

Other Oversight Activities

In addition to the various other activities described in this report, OIG during 2022 attended all monthly Departmental Chief Contracting Officer (DCCO) teleconferences on procurement issues, the District Attorney's Annual Labor Conference, a countywide procurement policy training session (at which OIG provided a segment of the training), and both meetings of the interagency County Procurement Policy Monitoring and Assessment Committee.⁵⁰



entity to seek written affirmations from all offerers as to their understanding of and agreement to comply with the entity's procedures relating to permissible contacts.

⁴⁹ § 139-j (9).

⁵⁰ In other areas, as OIG's statutory mandate includes oversight of boards and commissions, OIG staff also attended meetings of and maintained contact with, the Board of Ethics and the Civil Service Commission.

Reports and Recommendations

Advisory Report: Effectiveness of Low Vendor-Response Surveys

Background

Obtaining best value is an important goal of public procurement. In many cases, best value is realized by selecting the responsive vendor bid offering the lowest price. In other cases, best value is the vendor proposal offering the most advantageous combination of cost, quality, and efficiency.⁵¹ Maximizing the pool of potential vendors for a given procurement is an important step in achieving best value. It is axiomatic that increasing competition can result in lower cost to the purchaser. In addition to increasing the opportunity to obtain favorable pricing, greater competition also gives the County more options regarding the qualifications and proposals of bidding firms. Conversely, having only one or two bidders can impede achieving such benefits, and in some cases may also result in repetitive outcomes – the same contract awardees, over and over.⁵²

Nassau’s procurement policy appropriately recognizes that County employees having responsibility for contracting procurement should “encourage competition, prevent favoritism, and obtain the best value in the interest of the County and the taxpayers” and “ensure fair competitive access to procurement opportunities to a broad cross-section of responsible vendors.” Moreover, “[s]uccessful public procurement requires that fair and open competition be applied to the maximum extent practicable....” To those ends, the policy sets out several methods to foster competition.

Nonetheless, OIG has repeatedly observed that some County procurement solicitations elicit little vendor participation; the County receives just one or two bids or proposals. This low level of response can be the result of a variety of factors, including vendor unavailability and/or contract provisions that reduce the pool of vendors able to meet the County’s requirements.

When the County receives two or less bids in response to a formal solicitation, the procurement policy requires that the responsible department perform a low vendor-response analysis. Prescribed activities conducted during this analysis include “review[ing] the specification to ensure that it is not unduly restrictive so as to limit competition” and “survey[ing] vendors that received notice of the solicitation but did not

⁵¹ The latter is most commonly applicable to solicitations conducted via the Request for Proposals (RFP) process.

⁵² This result may also create an unfavorable public perception of the County’s commitment to competitive process, thereby discouraging new proposers; a “vicious cycle.”

respond to determine why the vendor chose not to do so.” The results of these efforts are to be reported by the respective department in a memorandum included in the Legislative approval package.⁵³

Findings

OIG reported that it observed three situations during 2022 in which low vendor participation surveys were conducted in a manner that captured and conveyed little information useful for understanding whether there were steps the County should take to increase competition. These situations occurred in two departments which together handle a very substantial portion of the County’s procurement activity. Further, OIG saw evidence suggesting that the manner in which the three surveys were handled was not unusual.⁵⁴

In the three cases, OIG staff followed up by contacting non-bidding vendors and was able to obtain explanations as to why they declined to bid. Notably, some of the reasons given to OIG by vendors for not bidding were directly related to the County’s specifications. This sort of information had not been memorialized by the departmental employees who performed the surveys.

Office of Purchasing

Two of these cases involved blanket purchase orders handled by the Office of Purchasing. One purchase order was for HVAC Computer Software Maintenance and Monitoring. County records reflect that 19 vendors viewed (electronically accessed) the bid solicitation documents but only one vendor submitted a bid.

While there was a low-response memorandum contained in the Legislative approval package, it failed to say that the non-bidding vendors were indeed contacted for their feedback. Most importantly, it did not explain the *reason(s)* that any of the vendors declined to submit a bid. Instead, the memorandum merely recited *general procedures* that the Office of Purchasing is supposed to take when there is low vendor response to a solicitation. The memorandum provided the reader with *no insight* as to why there was only one bid, let alone whether such outcome was unavoidable.

⁵³ Countywide Procurement & Compliance Policy #CE-01-2021, sections II A, III B and G.

⁵⁴ While the Advisory Report describes only three case studies, the generic language of their three low vendor analysis memoranda is not unique; rather it mirrors memoranda OIG has seen in various other procurement packages submitted to the Legislature. Thus, in OIG’s assessment, it is highly likely that the concerns identified in OIG’s report apply beyond the particular samples described.

There was somewhat more information on file within the Office of Purchasing. The buyer's call log listed the 18 non-bidding vendors and for 14 of these the log reflected a reason for the vendor not bidding.⁵⁵ Unfortunately, the information recorded in the log was largely cursory. It provided little meaningful insight as to the key question of whether it might have been reasonably possible for the County to get more bidders.

OIG staff accordingly contacted non-bidding vendors. OIG was able to obtain information from eight vendors about their reasons for not submitting a bid; information that was more specific and enlightening than what appeared in the log entries.⁵⁶ For example, the call log simply stated that one vendor did not bid because they "*were not interested.*" However, when OIG spoke with that vendor's account executive, he indicated that the firm did not bid ***because the software required by the County specifications is proprietary.*** This rather explicit and telling explanation appeared neither in the call log nor in the package provided to the Legislature.

For another firm, the call log reflected only the opaque explanation that the vendor did not submit a bid because it "*could not submit a competitive bid.*" However, when OIG staff spoke with the vendor's director of system sales, he stated that the County's ***specifications were too broad***, and explained that ***his company works with some, but not all the systems specified in the contract.*** Again, this sort of explicit explanation appeared neither in the call log nor in the information submitted to the Legislature.

Significantly, both vendors' explanations reflect concerns with the County's specifications. In OIG's view, this information should have been of interest to decision-makers in the Administration, given the receipt of only one acceptable bid.

The other blanket purchase order OIG reviewed was for the repair and/or installation of locks – and for automatic doors. Records reflect that although 17 vendors viewed (accessed) the bid documents, only one vendor submitted an acceptable bid for this solicitation.⁵⁷ OIG saw a virtually identical, low-response memorandum in the Legislative approval package – which again failed to explain whether any vendors were actually surveyed, or convey specific reasons that they did not bid.

⁵⁵ For the other four vendors, the log indicated that messages were left for two of them, and that the telephone numbers were not in service for the remaining two.

⁵⁶ Four of these eight also confirmed that someone from Purchasing had contacted them regarding their decision not to submit a bid.

⁵⁷ A buyer's log entry indicated there was one other bid but it was deemed unacceptable: "submitted a bid electronically could not accept."

The buyer's call log in this instance listed 15 non-bidding vendors and for 12 of these, the log reflects a reason for not bidding.⁵⁸ Again however, the entries were largely cursory and provided little useful insight as to whether there was something the County could have reasonably done to enhance competition. Such information could have been of particular interest, given the single acceptable bid received.

OIG staff again contacted non-bidding vendors and was able to obtain a more specific understanding as to why some of the vendors did not submit a bid – including whether the County's solicitation in some manner had discouraged bids.⁵⁹ In one instance, the buyer's log entry vaguely reported that the vendor did not bid because it "*was not a good fit for them.*" In speaking with the vendor's vice president, however, he shared with OIG the observation that *it is not typical to have both locksmithing and door repair services as part of the same contract, as locksmiths typically do not do door repair work.*⁶⁰ OIG noted that again the vendor's cited concern involved the County's specifications – in this case, the combination of two trades into one solicitation – which might shed light on why the solicitation yielded only one acceptable bid. This informative explanation, however, appeared neither in the call log nor in the information provided to the Legislature.

Observations

In OIG's assessment, when departmental staff perform a low vendor response survey, they should do so with the underlying purpose in mind – that of finding out whether there may be things that the County can reasonably do to improve competition. As such, staff should conduct these surveys in a manner that seeks to elicit meaningful, specific feedback from non-bidding vendors. Compared with the general responses recorded by Purchasing in the foregoing examples, the sort of specific feedback obtained by OIG appears to be much more useful for gaining a meaningful understanding of the low vendor participation, and for potentially finding ways to mitigate it.

The County's procurement policy outlines the circumstances in which a low vendor response analysis is required, and the steps such an analysis should include. However, as

⁵⁸ The log indicated that telephone messages were left with the three remaining vendors.

⁵⁹ OIG contacted 11 non-bidding vendors. Four confirmed that someone from Purchasing contacted them regarding their decision not to submit a bid.

⁶⁰ Parenthetically, OIG also reported that for another company, the call log stated that a vendor did not submit a bid because they "*don't do this type of work.*" The vendor's president, however, told OIG that his firm did not bid because the company *missed the deadline*; a wholly different reason. While a broad conclusion about log accuracy cannot be drawn from this instance, and especially given that the log does not specify who in the company that Purchasing had spoken with, such basic discrepancy was somewhat disconcerting.

OIG reported, the policy largely does not specify the survey questions that should be posed to non-bidding vendors in order to elicit the most pertinent information, nor how that information should then be shared.⁶¹

Moreover, as OIG reported, there may be little practical value in the exercise of contacting non-bidding vendors if the Office of Purchasing does not share the information it obtains with client (departmental) decision-makers. Yet in both of the foregoing instances, where Purchasing handled a procurement on behalf of another department, whatever the extent of information elicited by Purchasing from the vendors, that feedback was apparently not conveyed back to the client user department.⁶² As a result, the department employees most knowledgeable about the product or service would not have the opportunity to assess the feedback; preventing their informed decision, i.e., whether the solicitation should be modified to bolster competition, or to go forward with the sole bidder.

OIG reported that unshared information is a potential missed opportunity; to make use of it to consider whether to pursue ways to improve competition and promote economy.

Department of Public Works (DPW)

The third case described in the Advisory Report pertains to the award in 2022 of a “requirements contract” by DPW for as-needed general construction work. The Contract Summary stated that there had been only one acceptable bidder when the bids were opened in July 2021.⁶³ In light of this outcome, the DPW Commissioner appropriately directed that the solicitation be cancelled and reissued. The solicitation was reissued in September 2021. This time five firms obtained the bid package (one *less* than the first time), and three firms submitted bids (likewise one *less* than the first time).

DPW rejected one of those new bids. As DPW was left with only two bids, the employee responsible for such contracts prepared a low vendor response memorandum, duly signed by a Deputy Commissioner and included in the Legislative package. OIG reported, however, that the memorandum was perfunctory, offering little specific insight as to why DPW did not receive more bids for the contract.

⁶¹ The existing Policy does instruct that if a vendor gives the response that it “*is not interested in pursuing a County contract at this time—as a follow-up ask why this is the case[.]*”

⁶² OIG found no record indicating, and the buyer confirmed, that what he may have learned was communicated, and he was unaware of anyone else who would have done so. The existing procurement policy did not explicitly mandate such communication.

⁶³ Six firms had obtained the bid package. Four firms submitted bids. Of these four, DPW rejected two of the bids and one bidder withdrew its bid, leaving DPW with only a remaining single bid.

Part of the memorandum spoke in generalities about “*issues that contractors have raised*” about doing business with the County. The memorandum’s author confirmed to OIG that the text *was just general language* and not specific to *this* contract.

The only information recited about vendor outreach was: “*Vendors who picked up the bid package but did not bid this project (3) were contacted. One of the vendors stated that, after reviewing the contract documents, they elected not to bid. The other two vendors did not return phone calls.*” There was, unfortunately, no explanation as to why the vendor “elected not to bid.”⁶⁴

Thus, while the memorandum could give the impression that it described the results of an individualized inquiry, in reality it was *pro forma* exercise in compliance providing no truly useful information; no insight as to the actual reason(s) that any particular vendor decided not to bid on this solicitation.

In this instance, there was no additional information in the department. While the DPW employee told OIG that he called three vendors he was not able to provide any documentation or further details, such as which vendor he spoke with or what else the vendor had explained to him.

Had DPW’s memorandum set out the vendor’s specific feedback rather than reciting general language, it might have been more useful for gaining a meaningful understanding of the low vendor participation in this case, and for gauging whether it reasonably could be mitigated.

OIG staff accordingly contacted the vendors that purchased the bid package (for either of the solicitations) but did not bid. Each firm provided OIG with specific explanations as to why it did not bid; insights that are absent from the generic memorandum.⁶⁵

⁶⁴ The reference to contacting *three* (3) vendors, did not make sense to OIG, unless the author was referring to both of the 2021 solicitations combined, as there were only *two* vendors, not three, who picked up each bid package but did not submit a bid. The author of the memorandum was unable, however, to clarify to OIG which vendors his memorandum referred to.

⁶⁵ A principal of one firm told OIG that the company declined to bid because it was unable to get its subcontractors to commit to being on-call at all times. Another firm cited a lack of in-house estimating staff relative to the amount of existing work the firm already had. The third firm indicated that it possibly had not submitted a bid due to union concerns.

OIG also reported that the ideal time to contact vendors would have been *before* the solicitation was reissued.⁶⁶ The solicitation for the contract was issued twice, yet apparently no vendor outreach was conducted between the first solicitation and the reissuance.⁶⁷

Thus, even though there was only one acceptable bidder, which led to a re-bid, DPW did not take advantage of the opportunity, before reissuance, to try to gain insight as to why there were not a greater number of bids. Had DPW done so, it might have been better positioned to make an informed decision; to assess whether the solicitation should be adjusted in some manner to promote broader vendor participation, or be left as-is.

Surveying vendors *only after* the second bidding period had closed was destined to be a less useful exercise, OIG noted.

Conclusions

OIG reported that there is value in conducting low vendor response surveys, when done in a meaningful, timely and effective way. In the instances described, it was not clear to OIG the degree to which the departments sought to accomplish the important underlying *purpose* of the County policy, by soliciting the key information needed for decision makers in the Administration and Legislature. Further, in two cases, the apparent lack of communication of the information that was obtained eliminated the possibility of the client department using that information to consider whether it would be advisable to make changes to the solicitation.

OIG advised that when departmental staff perform a low vendor response survey, they should do so with the underlying purpose in mind – that of finding out whether there may be things that the County can reasonably do to improve competition. As such, staff should be conducting these surveys in a manner that seeks to elicit meaningful, specific feedback from non-bidding vendors. Further, staff should memorialize the specific feedback received so that it can be shared with decision-makers as appropriate, and also be available for future reference for similar solicitations.

Recommendations

⁶⁶ To this point, the procurement policy's discussion of the low-vendor response analysis notes that: "*Many of the questions and issues raised in this section should be addressed prior to issuing a solicitation. Doing so will minimize the likelihood of having low vendor participation for the solicitation.*"

⁶⁷ OIG asked the DPW employee, who authored the memorandum and has responsibility for such contracts, if there had been vendor outreach to get more bids for the second solicitation. He stated that this is not something he does. The Deputy Commissioner who signed the memorandum was also unaware of such outreach.

In OIG's view, the examples illustrated opportunity for improvement. To improve the effectiveness and consistency of low vendor response surveys Countywide, OIG recommended that the Countywide Procurement & Compliance Policy should be augmented to:

1. Make more explicit the underlying purpose of vendor surveys, and specify the key questions to be asked of non-bidding vendors, including:
 - a) Why did the vendor decline to bid on the solicitation?
 - b) Was there anything in the County's specifications, terms or conditions that caused them not to bid? If so, what?
 - c) What changes, if any, could the County make to the solicitation to encourage competition?
2. To ensure that potentially useful information is given appropriate and timely consideration, instruct that when a vendor provides County staff with feedback that
 - a) suggests that something in the County's specifications, terms or conditions caused them not to bid, and/or;
 - b) indicates that there is a change to the solicitation or procurement process that the County could make to enhance competition;

such feedback must promptly be conveyed in writing to an appropriate decision-maker for consideration. This step should occur before either recommending award or reissuing the solicitation.

3. Describe documentation requirements for the results of vendor outreach efforts, including the level of detail to be captured.
4. Make explicit that when a solicitation is to be reissued due to low vendor participation, before reissuing the solicitation, strong consideration should be given to first eliciting vendor feedback, to determine whether it may be advisable to make changes to the solicitation.

OIG also recommended that suitable training be provided to applicable County staff.

In response, the Chief Procurement Officer advised OIG that enhanced policy provisions are being drafted and will be submitted for Administration approval.

Advisory Report: Gift Policy for Non-Employee County Agents/Representatives

Background

The Department of Public Works (DPW) retains private sector consultant firms to advise and/or act on behalf of the County. DPW's consultants include design consultants, construction management consultants and program management consultants. The scope of work of the program management consultants may include evaluating or assisting in the evaluation of vendor bids or proposals during the procurement process, and participating in vendor selection committees, and/or activities in support of DPW contract administration.

Program management consultants may play a role which in some respects mirrors that of Nassau County employees. While vendor selection committees are primarily composed of County employees, OIG has often observed program management consultants present as non-voting members of, or subject matter expert advisors to, DPW vendor selection committees. OIG has seen that program management consultants may not only participate in the examination of proposals but actively participate in committee discussions – opining as to the merits of vendors' proposals and potentially having an influence on the selection committee's decision-making process.

There are County legal and policy prohibitions of the giving of gifts to, and receipt of gifts by, County employees, including a "zero tolerance" policy concerning employees involved in or participating in the decision-making process with respect to procurements or contract administration. OIG reviewed the state of the County's existing guidance concerning the permissibility of giving gifts to *private sector* parties, such as program management consultants, who are representing the interests or acting as agents of the County.

Findings

OIG reported a need for enhanced policy direction. While the County's Code of Ethics regulates the receipt of gifts by the County's *employees* (both paid and unpaid), it does not have similar provisions for the County's *agents*, such as the privately employed staff of a County-retained consultant firm.

Similarly, while the County's Vendor Code of Ethics provides in part that:

No Vendor may offer or give any Gift, directly or indirectly, to a Nassau County *Employee*. Similarly, no Vendor may offer or give any Gift, directly or indirectly, to any Family Member of a Nassau County *employee* where

such Gift is made because of the Vendor's relationship with the Nassau County *Employee*(emphases added).

the Vendor Code of Ethics does not prohibit vendors from offering or providing gifts to the County's *consultants*, the private sector employees who are representing the County or otherwise serving on its behalf. The Vendor Code likewise does not prohibit the County's consultants or agents from accepting gifts from other vendors.

County Executive Order 2-2018 (the "Zero-Tolerance Policy") prohibits County *employees* in certain roles from accepting gifts of any form or value from vendors or anyone doing business, or likely to do business, with Nassau County. While those prohibitions specifically apply only to the County's *employees*, the Order also requires that the County Attorney's Office include a provision in all county contracts prohibiting in part any vendor (or their representative) from offering, giving, or agreeing to give anything of value to a County "*agent, consultant, construction manager or other person or firm representing Nassau County,*" or to a member of their immediate family, in connection with the performance of their duties on behalf of Nassau County.⁶⁸

This requirement is repeated in the Countywide Procurement & Compliance Policy. Additionally, both the Zero Tolerance Policy and the Countywide Procurement & Compliance Policy require that the Chief Procurement Officer include similar wording in all County solicitations, including Requests for Proposals and bid solicitations.

Nonetheless, OIG reported that the Vendor Code of Ethics would provide a highly suitable place to reinforce the prohibition of gifts by vendors to the County's agents or representatives. This is because the Vendor Code serves as a central repository of provisions governing the conduct of vendors, and is applicable even to those in pre-contractual status.⁶⁹ Additionally, as the Vendor Code is commonly incorporated by reference in County contracts, this would ensure that the prohibition is automatically part of each such contract, even if the language prescribed in Executive Order 2-2018 was inadvertently omitted.

On a related note, OIG also observed that although County procurement policy requires certain contract language referencing the Vendor Code, it does not squarely direct that the Vendor Code itself be incorporated into contracts and solicitations, or specify when or how the contents of the Vendor Code should be communicated to vendors.

⁶⁸ The phrase anything of value includes but is not limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, or currency of any kind.

⁶⁹ The definition of the word "Vendor" in the Vendor Code of Ethics includes any individual or entity seeking to do business with Nassau County.

Selection Committee Consultant Certification Forms

OIG also reported there was opportunity for improvement in the certification forms used by consultants participating in County vendor selection committees.

The Countywide Procurement & Compliance Policy provides templates of documents to be executed by Nassau County employees and consultants prior to opening vendor proposals. There are three certifications to be completed by County employees and four largely similar certifications to be completed by non-County individuals participating in selection committees or “*performing in an advisory function embedded with County staff*” (consultant forms). It is OIG’s understanding that the purpose of the consultant forms is to have such persons serve under ethics principles analogous to those of similarly situated County employees.

Both sets of forms require committee participants to certify, in part, that they have no financial or other conflicting interests or connections, or other interests or connections which might tend to subject the County to criticism as to impairment of their objectivity. OIG reported that while these forms are an important means to that end, there is a difference between public sector and corporate environments that the consultant certifications do not specifically address.

OIG noted that what is acceptable practice within the corporate environment does not always align with acceptable conduct in governmental environments, such as Nassau County. As meals or other business hospitality may be more commonplace in the private sector, a consultant might not necessarily identify that the receipt of gifts from vendors might be perceived as a conflict – or as otherwise raising a question as to impairment of his or her objectivity – and thus not acknowledge such gifts in his/her certifications. The existing consultant forms do not address this consideration.

Recommendations

OIG accordingly recommended that the Administration:

1. Enhance the Nassau County Vendor Code of Ethics by adding explicit prohibitions:
 - (a) of vendors providing gifts or other benefits to County agents/representatives of Nassau County; and
 - (b) of acceptance of gifts or other benefits by County agents/representatives of Nassau County.

OIG provided an example as to how this recommendation could be accomplished by revising the language of the Vendor Code.

2. Revise the *Certification of Consultants Participating in the Selection, Negotiation or Award of Contracts* form to explicitly add, as a reportable interest, the offer or receipt of a gift or other benefits, within a specified look-back period, to the participant or a family member of the participant, from any vendor or agent of a vendor, whose proposal, bid or other submission may be considered by the County.

3. Revise the selection committee certification forms to ensure that all members of selection committees and their advisors, including those who are not County employees, are on written notice and acknowledge awareness of the prohibition against acceptance of gifts or other benefits from vendors or their agents.

4. Ensure that the Vendor Code of Ethics is explicitly incorporated into all County solicitations and contracts, either by reference or verbatim.

In response, the Chief Procurement Officer advised OIG that a draft policy incorporating OIGs recommendations will be submitted for the Administration's review.



Updates to Prior Annual Report

Item Review: Assignment of Tax Liens

Background

As previously reported, OIG had conducted a review of a proposed Resolution item that would have a revenue impact, submitted in December 2021 by the prior Administration to the County Legislature. The item proposed the assignment of a tax lien certificate for certain real property, wherein the tax liens would be assigned to the current owner of the property at less than the full dollar amount, i.e., without payment of interest or penalties. This would, in effect, waive the current property owner's payment of those amounts.⁷⁰ The Staff Summary asserted that the assignment of tax liens at less than full dollar amount is permitted under the Nassau County Administrative Code, provided that the assignment is to a party who did not have an interest in the property at the time of the non-payment of the taxes.

OIG noted that, even if the above legal assertion was correct, the Administrative Code imposes the further requirement that such assignment be in the "best interests" of the County. There was, however, no "best interests" statement in the legislative package, nor was there a statement as to the dollar amount of penalties and interest that would effectively be waived. To OIG's understanding, the amount in question might be as high as approximately \$450,000.

OIG accordingly issued in December 2021 a Review Statement to the Legislature and the Administration that, in the interests of enhanced transparency and to better facilitate informed decision-making, OIG believed it would be advisable for the Administration to amplify the public record to reflect:

- The total amount of funds (penalties and interest) to be waived;
- Whether the Administration is in fact representing that it determined such waiver is in the best interests of the County; and if so,
- The rationale justifying such determination, e.g., a description as to why it is necessary or prudent; the alternatives; what would happen if the amount was not waived.

Following the issuance of OIG's Review Statement, the Administration withdrew the item

⁷⁰ The liens were the result of nonpayment of real property taxes by a previous owner of the property.

from consideration by the Legislature.

2022 Update

In January 2022, the new Administration submitted to the Legislature a proposed Resolution item that was essentially the same as the above item submitted in December 2021. The new submission lacked the same basic information that OIG had recently identified as advisable to include in the public record. Additionally, while the information in the December 2021 Legislative package had stated that the property would be put to productive use, was “presently projected” to be used for senior housing/assisted living and would result in the payment of future property taxes, the January 2022 submission provided no information about the projected use of the property, the projected revenue, or the level of assurance of the projections.

OIG therefore submitted in January 2022 a Review Statement, in which OIG advised that it believed that the Administration should clarify the written public record, and provide the Legislature with the following information:

- The amount of funds to be waived;
- Whether the Administration had in fact determined that assignment without full payment of penalties and interest is in the best interests of the County; and if so, the rationale for concluding such waiver is in the County’s interest; the justification for such determination; an explanation as to why it is necessary or prudent to waive such funds, to include:
 - What would happen if the penalties and interest were not waived;
 - The supporting evidence/documentation of the consequences if the assignment required full payment;
 - The alternatives to not waiving penalties and interest.

OIG also commented that based on its plain reading of the language of the County Administrative Code, section 5-45.0 (b), it appeared that the proposed assignment for less than the full amount of unpaid interest or penalties would violate the Administrative Code. OIG therefore inquired in its Statement as to whether there is any legal precedent (case law) that the proposed assignment would not violate section 5-45.0 (b).

The proposed Resolution was subsequently passed by two Legislative committees, in January 2022. It is OIG’s understanding that the Administration will provide the Legislature with additional information prior to consideration of the item by the full Legislature.

OIG-Recommended Revisions of Vendor Disclosure Forms

As previously reported, in 2019 OIG conducted a detailed examination of the County's existing vendor disclosure form known as the Business History Form (BHF), and of revisions for it then under consideration. Based on our review, OIG provided the Chief Procurement Officer (CPO) with a set of recommended supplemental revisions of that form. These involved modification of existing questions and the vendor's certification language, as well as the addition of certain pertinent questions. OIG followed up with the CPO during 2020. The revisions were not then implemented, due to emergent priorities associated with the pandemic and a decision to simultaneously issue revised versions of both the BHF and the companion Principal Questionnaire Form (PQF).

The OIG likewise provided the CPO with a set of recommended revisions for the PQF, similarly intended to enhance and clarify the questions posed to vendors, the instructions identifying the persons who are required to file, and to better capture the range of information relevant to the County's responsibility determinations.

During 2021, OIG followed up to ascertain the status of the new versions, and subsequently reviewed and commented on the latest drafts of both forms. OIG was given to understand that the CPO had adopted revised BHF and PQF forms, which reflect a number of enhancements recommended by OIG. OIG subsequently discovered in 2022, however, that neither of the new versions were actually in use. OIG accordingly followed up to ascertain whether the new Administration intended to implement the revised forms. As of the writing of this report in March 2023, it appears that the Administration has decided to continue using the existing disclosure forms which OIG deems to be less effective for thorough vendor vetting.



Notifications

When OIG becomes aware of adverse information about vendors arising in local jurisdictions, it checks to see whether these vendors are currently doing business with Nassau County. If the vendor is doing business with Nassau, as a precaution, OIG alerts the Administration to the adverse information.

In the course of its work, OIG also at times observes operational issues which appear to warrant quick corrective action and notifies the appropriate party accordingly. In one example during 2022, OIG staff noticed that the website of the Assessment Review Commission (ARC) lacked information about a scheduled meeting, which would be needed for interested members of the public to attend. OIG notified ARC, which quickly took corrective action, adding the information to its website. In another instance, OIG staff discovered a typographical error causing a partial misstatement of prohibited conduct, within the County's mandatory sexual harassment prevention online training. OIG alerted the Administration, which promptly took steps to correct the text.

Stakeholder Training

In July 2022, the Deputy Inspector General gave a live PowerPoint presentation to more than 45 County employees attending procurement training, on the topic of *Guarding Against Fraud*. OIG information cards and fraud posters were also distributed to the attendees.

Join the Team; Be an Agent of Positive Change

Corruption and fraud have a profound effect on the efficiency and effectiveness of government; on how it serves its people. Corruption can result in the misallocation of limited resources, encourage wasteful and reckless spending of public funds, and adversely affect law-abiding businesses and employees. Fraud can result in your, the taxpayer's, hard-earned money being stolen.

Each bribe, each false document submitted, each collusive bid, each kickback, each conflict of interest, chips away at the integrity and public trust that are essential to good government.

Fighting corruption and fraud, ensuring a level playing field, and maintaining strong ethics in government, are important responsibilities – responsibilities which are shared by all of us in Nassau County. Successfully fighting fraud and tackling corruption is a team effort. We encourage you to be part of the team; to help us by sending OIG your complaints, concerns, and suggestions.



. . . . Other offenses violate one law while corruption strikes at the foundation of all law.....If we fail to do all that in us lies to stamp out corruption we cannot escape our share of responsibility for the guilt.

Nassau County resident, President Theodore Roosevelt, 1903.

APPENDIX

- ♦ OIG POSTER
- ♦ FREQUENTLY ASKED QUESTIONS ABOUT COMPLAINTS

DO YOU SUSPECT

**Fraud Waste
Corruption or
Abuse**

**Report
Nassau County
Vendor, Contractor, and
Employee Fraud, Waste,
Corruption, and Abuse
to the
Nassau County Office of
the Inspector General**

Hotline# 516-571- IG4U (4448)



Frequently Asked Questions about Complaints

You Can Be Part of the Solution

Good government is everyone's business. Anyone can help fight fraud, waste, abuse, and corruption in our County by reporting suspicious activity.

If you have a complaint or concerns involving a Nassau County agency, its employees, contracts, projects, or programs – or about any individual or entity that does business, or is seeking to do business, with the County – tell us about it. Your call, email, or letter could be the one that saves the County millions of dollars or helps put an end to abusive or wasteful practices.

Q: Who may file a complaint with the OIG?

A: Anyone, including Nassau County employees, companies that do business with the County, and members of the public.

Q: What kind of complaints does the OIG investigate?

A: Fraud, theft, waste of funds, abuse of resources or position, bribery, corruption, conflicts-of-interest, gifts from vendors, whistleblower reprisal, and serious misconduct or mismanagement affecting or involving County operations, programs, projects, contracts, or funds. OIG does not investigate routine personnel issues, such as grievances.

Q: Does the OIG investigate individuals or companies that conduct business with the County?

A: Yes. The OIG may investigate any individual or entity that either is doing business with Nassau County, receives funds from the County, or which, through the submission of a bid, proposal or application, expresses interest in doing business with the County.

Q: How do I file a complaint with the OIG?

A: A complaint can be registered with the OIG in several ways: via the online complaint form, email, fax, surface mail, in-person, or telephone:

- **Telephone Hotline: (516) 571-IG4U
(516) 571-4448**
- **Email: InspectorGeneral@nassaucountyny.gov**
- **Fax number: (516) 571-0029**
- **Surface Mail address:
Nassau County Office of the Inspector General
1 West Street, Room 341
Mineola, NY 11501**

Q: Can I request that my identity be kept confidential?

A: Yes. If you request confidentiality, we will not reveal your identity without your permission, unless required by law. You should also be aware that there are provisions of law that, under appropriate circumstances, protect employees from retaliation. If you believe that making a report to the OIG will place you at risk of retaliation, you should inform us of that as well.

Q: Do I have to identify myself if I make a complaint to the OIG?

A: No. You can remain anonymous in submitting an allegation to us. Note, however, that your information will be most useful if we have a way to contact you if follow-up questions are necessary. Information that is too vague or cannot be supported can result in closing your complaint without remedial action. If you remain anonymous, we also will not be able to acknowledge receipt of your complaint or later advise you if the matter is in open or closed status.

Q: What information should I include in my complaint?

A: Please provide as much information as you can. Information that is too vague or cannot be supported can result in closing your complaint without remedial action. Therefore, we also encourage you to give us at least one way to contact you should we have questions or need more information. In any event, please be as specific as possible in explaining the nature and details of your complaint. You may use the following list as a guide to the information to include:

- If a project or contract is involved, identify it.
- When and where did the event happen? Give dates, times; location; facility; work unit, etc.
- Who engaged in the misconduct? Who else was involved?
- What exactly did he/she/they do?
- How do you know what you are reporting? Did you witness it? Hear about it from someone else?
- What proof exists to support or confirm your complaint?
- Who else witnessed it? Who else is aware of the wrongdoing?
- Who else has further information? What is their contact information?
- How was the fraud accomplished? How was the scheme concealed?
- How many times has it happened? How long has this situation existed?
- Who else have you reported this matter to? When? What action was taken?

The above list is only a guide; you may wish to include other/additional information.

Q: What should I do if I acquire more information after I have submitted a complaint?

A: Any additional information you acquire after making your report to the OIG should be reported to us in a follow-up telephone call, email or letter.

Q: What do the terms fraud, waste, abuse, and mismanagement mean?

A: **Fraud** is the misrepresentation of a material fact in order to obtain a payment or benefit. Put another way, fraud is wrongful or criminal deception intended to result in financial or personal gain.

Waste is negligent, needless, careless or extravagant expenditure of County funds, incurring of expenses, loss of revenue, or the misuse of County resources or property. Waste may result from improper or deficient practices, systems, controls, or decisions.

Abuse is the intentional wrongful or improper use of County resources, which can include the improper or excessive use of a person's County position, in a manner contrary to its rightful or legally intended use.

Mismanagement as used here, is when management action – or inaction – could adversely impact the County's operations, programs, projects, or funds or grossly deviates from the standard of care or competence that a reasonable person would follow.

Q: What is an example of a conflict-of-interest?

A: An example would be a County contracting or oversight official who has an undisclosed financial interest in a contractor, vendor or consultant, resulting in an improper contract award or inflated costs to the County.

Q: What is an example of fraud?

A: Fraud can take many forms. One example is where a supplier (vendor) misrepresents how much material was provided, or the type or quality of the goods it provided and billed, to the County. Fraud can include submitting false claims, making false statements, concealing material information, unauthorized disclosure of confidential information relating to procurement matters, and the offer, payment, or acceptance of bribes.

Q: What is an example of waste?

A: Waste can include extravagant, careless, or needless expenditure of County funds. One example would be causing County funds to be used to purchase replacement parts for old equipment that is being scrapped.

Q: What is an example of misconduct?

A: Examples include a County official or employee improperly using County resources for unauthorized purposes, or disseminating confidential information without proper authority to do so.

Q: What is an example of abuse?

A: Examples include a County official or employee improperly using his or her position in order to benefit the interests of a family member, such as inducing the County to hire that person, or to award a contract to the family member's business.