



Nassau County Office of the Inspector General

JODI FRANZESE
Inspector General

One West Street
Mineola, N.Y. 11501

December 19, 2019

Hon. Laura Curran
Nassau County Executive
1550 Franklin Avenue
Mineola, NY 11501

Dear County Executive Curran:

Enclosed for your information and appropriate action is an Office of the Inspector General (OIG) Advisory Report, entitled *Vendor Adverse Information in Staff Summaries*. The report describes an opportunity identified by the OIG for enhancement in an aspect of the procurement process.

Please advise me within 30 days of any actions taken in response to the recommendation in the report.

If you have any questions, please do not hesitate to call me at (516) 571-1470.

Very truly yours,

A handwritten signature in black ink, appearing to be "Jodi Franzese", is written over the typed name and title.

Jodi Franzese
Inspector General

Enclosure

Cc: Richard J. Nicoletto, Presiding Officer, Nassau County Legislature
Kevan Abrahams, Minority Leader, Nassau County Legislature
Helena Williams, Chief Deputy County Executive
John Chiara, Deputy County Executive for Compliance



Jodi Franzese
Inspector
General

NASSAU COUNTY OFFICE OF THE INSPECTOR GENERAL Advisory Report

Vendor Adverse Information in Staff Summaries

2019-A003

Issued: December 19, 2019

"Good government is everybody's business"

Background

In accordance with New York State law and Nassau County's Countywide Procurement Compliance Policy (CPCP), the County may award a contract only to a vendor that has demonstrated that it is "responsible." The CPCP states: "A responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars."

Determining vendor responsibility is an integral step in County procurements. County departments are required to conduct vendor responsibility reviews for proposed contract awards and determine whether vendors are responsible, subject to additional reviews by the Chief Procurement Officer (CPO) and Deputy County Executive for Compliance.

The intent of a responsibility review is "to determine if there exists any material adverse information impacting the vendor's capacity or integrity."¹ Examples of material adverse information (MAI) include criminal convictions, civil judgments, license revocations, investigations, debarment, violations or fines, negative performance evaluations, liens, and bankruptcies.² The source of such information can be declarations made by vendors in their questionnaire forms, or the result of checks performed by the County.

In some cases, the County may want to proceed with an award to a vendor even though MAI was found. Often, in such cases, the vendor has demonstrated that it implemented corrective action and/or plans to prevent recurrence of the conduct or event at issue. In these instances, the administration could find a vendor responsible and eligible for contract award notwithstanding the existence of MAI.

Material Adverse Information in the Legislative Package

The CPCP requires, as part of the legislative approval process, that for each contract or purchase recommended for award which is valued over \$100,000, the procuring department submit a staff summary summarizing "the purpose, terms and conditions, and

¹ CPCP.

² CPCP guidance cautions, however, that not all adverse information is necessarily material, and outlines factors pertaining to materiality.

price of a proposed contract, the amount requested for encumbrance, and the procurement history, including which County officials and agencies have approved it.”³

The staff summary, typically one of the first documents in the package given to the Legislature, does not include a section dedicated to whether the procuring department found the vendor responsible for award notwithstanding the existence of MAI. OIG has observed that departments rarely reference MAI in the document’s narrative section. While the CPCP requires that staff summaries include the “procurement history” it does not specifically require departments to indicate whether they found the vendor to be responsible for award notwithstanding MAI. Further, the CPCP does not require that the staff summary note whether the Chief Procurement Officer reviewed, and concurred with, the decision.

The existence of MAI discovered by the County independent of the vendors’ own disclosures is usually not included in the legislative package. Rather, the evidence of adverse information appearing in the legislative package is typically limited to facts self-disclosed by the vendors in their business history and principal questionnaires, and possibly in associated follow-up correspondence between the County and the vendors. Unlike the staff summary, the location of these important documents in the legislative package varies by department. In addition, the contract package can be voluminous and possibly include multiple principal questionnaire forms. In one case, OIG found a vendor’s adverse disclosure in its business history form, on Page 88 of the contract’s 621-page legislative package. The vendor’s explanation regarding the disclosure was on page 127, 39 pages deeper into the package.

Opportunity for Improvement

Given the importance of vendor responsibility determinations to the procurement process, the existence of MAI is a significant facet of the contract’s procurement history and logically merits a place in the staff summary. Moreover, including this information in the staff summary would increase transparency and promote more efficient, informed decision making by the Legislature.⁴

Recommendation

The County should enhance departmental staff summaries to incorporate a statement or check box as to whether material adverse information regarding the proposed awardee was identified; in cases where such information was identified, there should be a statement indicating that the department head found the vendor responsible for award notwithstanding material adverse information, and that the CPO reviewed and approved the decision.

³ There exists variance between departments in how they name this document. In some cases, it is called a contract summary or advisement. For the purposes of this report, the term staff summary is used.

⁴ As a parallel, staff summaries for contracts to be voted upon by the Board of the Metropolitan Transportation Authority disclose the existence of material (“significant”) adverse information.