



Nassau County Office of the Inspector General

JODI FRANZESE
Inspector General

One West Street
Mineola, N.Y. 11501

October 18, 2019

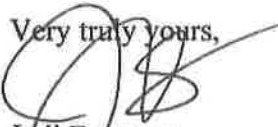
Hon. Laura Curran
Nassau County Executive
1550 Franklin Avenue
Mineola, NY 11501

Dear Ms. Curran:

Enclosed for your information and appropriate action is an Office of the Inspector General (OIG) Advisory Report, entitled *Bid Evaluations by Design Consultants*. The report describes an opportunity identified by the OIG for improvement 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.

We appreciate the courtesy and cooperation afforded to us by Department of Public Works staff during our review. If you have any questions, please do not hesitate to call me at (516) 571-1470.

Very truly yours,

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 Bid Evaluations by Design Consultants 2019-A001

Issued: October 18, 2019

"Good government is everybody's business"

Origin of This Report

On August 8, 2019, the Office of the Inspector General (OIG) submitted to the Legislature a Contract Review Statement in connection with Item #B-15-19 (Contract #35121 16 G) noting, in part, that the OIG identified opportunities for improvement in the procurement process. This advisory report describes an opportunity for policy enhancement that the OIG observed in the course of its contract review, concerning the use of design consultants by the Department of Public Works (DPW) in evaluating bids for construction services.

Background – Use of Design Consultants by DPW

DPW personnel interviewed in connection with the OIG's contract review related that many of DPW's capital projects utilize the design/bid/build method of procurement. Under this method, the specifications of the project design are finalized before being put out to bid and then constructed by the winning bidder. It is a common practice under this method for DPW to procure the services of an external design consultant when the agency lacks in-house expertise and/or capacity. OIG was advised that, in addition to providing project design services, the design consultant's scope of work typically includes evaluating the apparent low bid during the build procurement process to ensure that the bid shows an appropriate understanding of the project elements. DPW personnel stated that the consultant's scope of work also typically tasks them with determining whether the bidder has adequate expertise and the financial capacity to be reasonably confident it can complete the project. Design consultants typically perform these functions by contacting references, reviewing previously completed projects, and checking the bidder's insurance, bonding, and equipment.

The scope of work for the design consultant in the matter OIG reviewed included the provisions that it "review all bid proposals received and provide representation at the pre-award meetings" and "[s]ubmit a written recommendation regarding award of the construction contracts." DPW personnel indicated that, in this context, the design consultant's role is to check the facts and provide their professional opinion to DPW.

Organizational/Financial Conflicts of Interest

DPW personnel told us that local design and construction firms often work together on projects and while this, in and of itself, might not be a cause for concern, DPW would be interested to know if the design firm, or any of its principals, had a financial interest in any of the bidders that they are tasked with evaluating. Nevertheless, at this time, design consultants are not required to



Jodi Franzese
Inspector General

NASSAU COUNTY OFFICE OF THE INSPECTOR GENERAL

Advisory Report Bid Evaluations by Design Consultants

2019-A001

Issued: October 18, 2019

"Good government is everybody's business"

disclose any potential conflicts of interest they might have with the construction firms whose bids they evaluate, nor does DPW proactively conduct a check for such relationships.

Best Practice

Nassau County procurement policies require members of procurement selection committees, who likewise perform a vendor evaluation function, to submit signed certifications indicating in part that they have no conflicts of interest with respect to the vendors that they will evaluate. However, these policies do not require an equivalent certification from the design consultants.

Moreover, the County's Code of Ethics, at § 2218, subsection 9 of the County Charter, provides, in part, that no agent of the County shall in any way influence the making, or fail to recuse him or herself from the discussion and approval process, of any County contract or agreement in which he or she "is interested directly or indirectly as principal or agent or as an officer of or owner of stock in a corporation."

In the absence of a requirement for design consultants to disclose any conflicts of interest with firms whose bids they are evaluating, DPW is unable to determine whether design consultants, acting as an agent of the County, are in compliance with this section of the County Charter.

Recommendation

Where a County vendor, such as a design or engineering consultant, is tasked with evaluating, rendering an opinion, and/or making a recommendation as to prospective vendors such as, but not limited to, construction firms, the County should require that the vendor placed in such an advisory role execute a written conflict of interest certification, analogous to those required of selection committee members. The certification should include a declaration as to whether the consultant has any financial, organizational, or other interest associated with any bidder or proposer that it will evaluate, as well as the other bidders or proposers in the solicitation. The scope of such certifications should include, but not be limited to, financial ties and personnel connections between the firms, as well as collaboration by the firms on any current or planned projects. As the impartiality of the consultant is essential, consideration should be given to also requiring a declaration of collaboration on projects completed in the recent past.

In the event that any conflicts or potential conflicts of interest are disclosed, the procuring department, or Chief Procurement Officer, should document its decision whether, and to what extent, the consultant will be allowed to participate in the evaluation or otherwise render its opinion.