
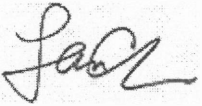


# NASSAU COUNTY



## COUNTYWIDE PROCUREMENT & COMPLIANCE POLICY # CE-01-2021

October 2021

<b>POLICY/PROCEDURE TITLE:</b> <b>Countywide Procedure No. 1-2021</b>	<b>DATE ISSUED:</b>  10/07/2021
<b>DEPARTMENT ISSUING:</b> <b>Executive – Procurement &amp; Compliance</b>	<b>AUTHORIZED and SIGNED BY:</b>  Chief Procurement & Compliance Officer   County Executive

**POLICY:**

The Office of the Nassau County Executive recognizes the importance of publishing concise, comprehensible and accurate instructions regarding the proper methods for procuring different types of goods and services and the approvals that must be obtained in each case. It is the policy of the County Executive to ensure that all relevant personnel understand the appropriate methods of procuring any given good or service in accordance with applicable laws and regulations.

**PURPOSE:**

To set forth clearly: (i) the different methods by which the County may procure goods and services, (ii) when each method may be used, (iii) what approvals must be obtained to complete a procurement under each method, and (iv) procurement-related elements of effective contract administration. All County personnel involved in procurement are directed to familiarize themselves with this procedure and to follow its provisions. However, this Procedure does not create any legal rights or duties or causes of action. Rather, it summarizes existing state and local law and the policy and preferred practices of Nassau County. The Procedure shall be amended from time to time, as necessary, to reflect changes in the law and County policies.

**SCOPE:**

All Nassau County Departments and Agencies. This Policy supersedes all previous versions of this Policy and the Procedure Internal Control Guideline, including the most recent version known as Countywide Procurement and Compliance Policy # CE-01-2019.

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# I. INTRODUCTION

This policy covers County procurement of goods, personal services, non-personal services, and construction. The policy sets forth the obligations of County procurement staff in the conduct of procurement actions; the procedural requirements that apply to each of the procurement methods that the County may use to purchase goods, services, and construction; and required elements of contract administration.

The policy is written to be comprehensive with respect to procurements that are wholly funded and controlled by Nassau County. There may be some instances where the requirements of a funding source (federal, state, or private) or another entity with jurisdiction differ from those stated herein for a specific procurement. In cases where contracts are to be funded in whole or in part by the federal or state government, additional or different federal or state laws or regulations may apply. In all such cases, the department seeking to procure goods or services should consult with the County Attorney's Office regarding such potential additional or different requirements. In some cases, the County may acquire goods or services offered directly by other governmental entities without going through a competitive procurement. Further, the acquisition or lease of real property, and the sale or disposition of goods, services, real or personal property by the County are not covered by this policy and procedure. Certain requirements apply only to a single agency. For example, Nassau County Charter §§ 1006, 1007 and 1008 set forth requirements for contracts by the Department of Social Services respectively for social services information, child care services and foster care and adoptive services. Such mandated requirements that apply to the contracts of a single agency only are not covered by this County-wide Policy in those instances where this Policy contradicts agency-specific requirements.

The Policy also sets forth procurement ethics, economic opportunity, and equal employment opportunities guidelines. These sections are a synopsis of County policies; they do not purport to be comprehensive guides to ethical, economic opportunities, or equal employment considerations.

Nothing in this policy shall be deemed to create, expand, modify or otherwise affect any legal right or duty or cause of action. See **Appendix A** for governing laws.

## II. General Provisions

### A. Standards of Conduct, Policies and Procedures

Nassau County employees shall abide by the established set of compliance standards and procedures referenced below. The primary purpose of this policy is to promote an ethical and transparent culture, free of fraud, waste, abuse, and corruption.

#### 1) Nassau County Code of Ethics

Nassau County employees are bound by the County's Code of Ethics set forth in Section 2218 of the Nassau County Charter, as well as by Article 18 of the General Municipal Law ("Conflicts of Interest of Municipal Officers and Employees"). Employees are responsible for informing themselves of all these requirements and complying with them. This section does not purport to be a comprehensive guide to such ethical considerations, but is merely a summary of those ethical guidelines that apply to the procurement process. A further summary of ethics provisions that has been published by the Board of Ethics is attached to this Policy/Procedure.

- Public employees responsible for the expenditure of taxpayer dollars have a responsibility to ensure that their conduct will not violate the public trust placed in them. They must make certain that their conduct does not raise suspicion or give the appearance that they are in violation of their public trust. To this end, public employees and elected officials having responsibility for contracting procurement at all levels shall:
  - encourage competition, prevent favoritism, and obtain the best value in the interest of the County and the taxpayers;
  - place professional responsibilities above personal interests;
  - ensure fair competitive access to County procurement opportunities to a broad cross-section of responsible vendors;
  - deal with the public and with vendors with courtesy, consideration, and even-handedness;
  - not engage in any communication regarding the procurement with employees, agents, consultants or lobbyists of a bidder or proposer after the official commencement of a competitive procurement process (by the publication of an Invitation to Bid or RFP or similar action), except in such manner as is specifically authorized by the Invitation to Bid, RFP or other written instructions issued to bidders or proposers;
  - use information gained confidentially in the performance of County duties solely in the County's interest; and
  - promptly and directly report waste, fraud, abuse, corruption, illegal acts, and unethical practices to the independent Office of the Inspector General's Hotline at (516) 571-IG4U (4448) or via email to [inspectorgeneral@nassaucountyny.gov](mailto:inspectorgeneral@nassaucountyny.gov). If there is doubt as to whether a given matter needs to be reported to the Inspector General, this Policy requires that the matter should be so reported.

per the County's Whistleblower protection (see Appendix X), any allegation of improper government action by a County officer, employee or agent that violates federal, state or local law

or rule or regulations may be reported to your supervisor or department head, or to any appropriate governmental body, including but not limited to, the District Attorney (if the allegations involve criminal conduct), the County Board of Ethics, the Inspector General, the Director of Human Resources, the County Executive or any Deputy County Executive, the Presiding Officer or Minority Leader of the Legislature, the County Attorney or the County Comptroller (if the allegation involves misuse of funds). Additionally, per section 196 of the County Charter, it is a crime to retaliate against, punish, threaten, harass or penalize any person for assisting, communicating or cooperating with the Inspector General.

- In soliciting, awarding, or administering a procurement, under no circumstances may an agency or an official take into consideration the fact that a vendor or associated individual(s) has or has not made or promised to make a campaign contribution.
- Vendors and their representatives have a responsibility to deal ethically with the County and its employees, and to respect the ethical duties of County employees. Information provided by vendors to the County must be complete and accurate. Vendors must at all times avoid conduct that is in restraint of competition. Vendors must not request County employees to engage in conduct that would violate the law, these Rules, or the principles set forth in this section.
- When an employee has doubt as to whether conduct is prohibited by Nassau County's Code of Ethics or by Article 18 of the General Municipal Law, he or she should first consult with agency counsel and then if necessary with the County Attorney's Office. If he or she remains in doubt, then he or she should seek an opinion from the County Board of Ethics.

## **2) Nassau County Zero-Tolerance Policy**

By County Executive Order 2-2018 signed on February 26, 2018, Nassau County has a zero-tolerance policy with respect to receiving undue benefits of any kind from vendors doing business or wishing to do business with the County. To avoid the occurrence of impropriety or the appearance of impropriety, County employees may not receive benefits from vendors doing business or wishing to do business with the County including but not limited to cash, cash equivalents, gifts, gift certificates, meals, travel, entertainment, gratuities, complimentary services or services offered at a reduce cost. County employees also are barred from accepting the promise of benefits of any kind in exchange for actions taken in their official capacity. For additional information see Appendix Y.

Following are elements of this zero-tolerance policy:

- Members of the county executive staff including deputy county executives, executive department and agency heads, deputy executive department and agency heads, and any other employee in a policy or decision-making role with respect to procurements and/or contract administration, are prohibited from accepting gifts of any kind or form of any value from any tenant, concessionaire, vendor, or from anyone else with who does business with or are likely to do business with County of Nassau; or accepting payment in any form for any services rendered to anyone who does business with the County or are likely to do business with the County or their representative or representative association.
- Members of the county executive staff including deputy county executives, executive department and agency heads, deputy executive department and agency heads, and any other employee in a policy or decision-making role with respect to procurements and/or contract administration are barred from



offering gifts, gratuities or payments of any kind or form of any value to any individual or organization who does business with the County or are likely to do business with the County, or their representative or representative association.

- Members of the county executive staff including deputy county executives, executive department and agency heads, deputy executive department and agency heads, and any other employee in a policy or decision-making role with respect to procurements and/or contract administration are barred from accepting cash discounts on merchandise or services obtained in any way connected with his/her employment except for discounts granted to all County employees.
- The County Attorney will include a provision in all county contracts prohibiting any tenant, concessionaire, vendor, or their representative or representative association from offering, giving, or agreeing to give anything of value either to a Nassau County employee, agent, consultant, construction manager or other person or firm representing Nassau County, or to a member of their immediate family (i.e. a spouse, child, parent, brother, or sister) in connection with the performance of their duties on behalf of Nassau County, including, but not limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, or Currency of any kind.
- The County Attorney will include a provision in all county contracts requiring tenants, concessionaires, and vendors to disclose their employment of a spouse, a son, a daughter, or a parent of a Nassau County employee of the agency or department that contracted or procured the goods or services.
- The Chief Procurement Officer will include a provision in all county solicitations, including but not limited to Request for Proposals and bid solicitations, prohibiting any tenant, concessionaire, vendor, or their representative or representative association from offering, giving, or agreeing to give anything of value either to a County employee, agent, consultant, construction manager or other person or firm representing Nassau County, or to a member of their immediate family (i.e. a spouse, child, parent, brother, or sister) in connection with the performance of their duties on behalf of Nassau County, including, but not limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, or United States Currency.

### **3) Nassau County Vendor Code of Ethics**

On June 5, 2019, County Executive Curran signed the Nassau County Vendor Code of Ethics. The County Executive recognizes the importance of the vendor community in helping the County provide necessary goods and services for the residents of Nassau County. The Nassau County Vendor Code of Ethics was adopted to ensure that all vendors doing business with Nassau County operate under the highest standards of legal and ethical conduct. The Nassau County Vendor Code of Ethics ensures that Nassau County Vendors are conducting their business with integrity, ethics, and compliance with all applicable laws and regulations. See Appendix Z for governing rules.

#### **4) Economic and Financial Opportunity**

It is the policy of the County of Nassau to foster the economic empowerment of minorities and women, and to cultivate the development of minority- and women-owned business enterprises, as well as small and locally-based businesses and service-disabled veteran-owned businesses. Through the rules and programs implemented by the Office of Minority Affairs, the County will enhance the ability of these businesses to compete for County contracts, will enhance County agencies' awareness of such businesses, and will ensure the meaningful participation of these firms in the County contracting process.

#### **5) Equal Contracting Opportunity**

It is the policy of the County of Nassau to promote equal opportunity for women and minority group members by County contractors and subcontractors and to ensure that all persons employed by or seeking employment with such contractors and subcontractors are protected from unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, gender, or citizenship status (and from any other unlawful discrimination pursuant to federal, state, local laws and executive orders) with regard to all employment decisions. Through the rules and programs implemented by the Office of Minority Affairs, the County will work to ensure equal opportunity for all these protected classes within the businesses that sell goods, services, and construction to the County.

#### **Minority- and Women-owned Business Enterprise (MWBE), Disadvantaged Business Enterprise (DBE), Service-Disabled Veteran-owned Business Enterprise (SDVOB), and Section 3 Programs**

Nassau County relies upon the vendor community to provide essential goods and services, and a diverse and inclusive vendor community is an important element in our success. For this reason, the County strongly encourages the participation of Minority- and Women-owned Business Enterprise (MWBE), Disadvantaged Business Enterprise (DBE), Service Disabled Veteran-Owned Business Enterprise (SDVOB), and vendors registered pursuant to section 3 of the Housing and Urban Development Act of 1968 with the United States Department of Housing and Urban Development ("Section 3") vendors in competitive solicitations for County contracts. The County's Office of Minority Affairs (OMA) is responsible for promulgating and implementing policies designed to increase participation by such vendors and monitoring and reporting performance in this regard. OMA plays an integral role in the procurement practices of the County.

- OMA promotes participation by MWBEs, DBEs, SDVOBs and Section 3 firms in County contracting processes in several ways:
  - OMA establishes and enforces policies and procedures related to MWBE, DBE, SDVOB, and Section 3 requirements;
  - OMA identifies certified vendors eligible to participate in County contracting opportunities;
  - OMA determines appropriate goals for individual solicitations, reviews and approves utilization plans, and monitors progress;
  - OMA performs outreach to potential eligible vendors regarding capacity-building and upcoming opportunities; and
  - OMA provides guidance to departments regarding MWBEs, DBEs, SDVOBs, and Section 3 businesses.

- The specific requirements of a given solicitation are determined by the following criteria:
  - The funding source (e.g. County, State, Federal, etc.);
  - Requirements of the funding program (e.g. Federal or State grant requirements);
  - The type of goods or services to be provided;
  - The availability of certified vendors eligible and available to provide the required goods or services; and
  - Requirements established in law.
- At present, Nassau County has a legal authority to establish formal goals in contracts as follows:
  - For State- and Federally-funded contracts, solicitations must include the goals stipulated by the funding source; and
  - For County-funded contracts, a goal of 6% participation has been established for SDVOBs.

Regardless of whether any given solicitation contains formal participation goals, the County strongly encourages qualified MWBEs, DBEs, SDVOBs, and Section 3 business concerns to participate in all County solicitations for which they are qualified. Any vendor with questions or concerns regarding a specific requirement or a potential opportunity should contact the issuing department or OMA for clarification.

## **B. Oversight and Accountability**

### **1) Designation of the Deputy County Executive for Compliance**

The County Executive shall designate a Deputy County Executive for Compliance (DCEC) responsible for establishing and enforcing fiscal, procurement, operational, and other compliance policies and procedures to be followed by all County entities

### **2) Designation of County Chief Procurement Officer**

By County Executive Order 4-2018 signed on May 22, 2018, County Executive Curran appointed the first County Chief Procurement Officer (CPO). The County Executive shall designate future CPOs responsible for establishing and enforcing procurement policies and procedures to be followed by all County entities. The CPO shall also promote strong relationships between the County and the vendor community; promote award of contracts to certified minority- and women-owned business enterprises, disadvantaged business enterprises, and service-disabled veteran-owned business enterprises; track and manage vendor and procurement data and performance; and manage procurement-related public information for the County.

Any requirement of this policy may be waived by the CPO in the best interests of the County. A waiver shall be granted by the CPO to the department in writing only after the department requesting the waiver submits to the CPO, and the CPO accepts, sufficient justification for the requirement to be waived. The CPO shall notify the Inspector General promptly of any waiver granted.

### **3) Designation of Department Chief Contracting Officers**

All Departments Heads act as part of their responsibilities as the Department Chief Contracting Officer (DCCO) for their department. The DCCO is responsible for overseeing the department's procurement staff including participants in proposal evaluation committees and other procurement functions. The DCCO also is responsible for approving all procurement actions of the department. The DCCO will be held accountable for ensuring that

the department's procurements fully comply with the County's Procurement Policy and applicable law. Unless otherwise provided by law or County policy, the County Executive and other elected officials, DCE, CPO, Department Head, or DCCO may delegate any authority vested in that official by the Policy in writing to other County officials or employees having the knowledge and experience necessary to exercise such authority in the County's interest. Copies of such delegations shall be filed with the CPO. Formal delegation of the DCCO role is allowed with the concurrence of the County's Chief Procurement Officer. With respect to all procurement actions only, the DCCO shall have a dual reporting relationship both within the contracting department and as a contracting officer reporting to the CPO.

The DCCO is responsible for overseeing all aspects and phases of a department's procurement activity from pre-procurement planning to contract performance evaluation and close-out. The DCCO will:

- Be knowledgeable of, apply, and enforce this Policy and all other relevant County procurement policies within the department;
- Act as the department's primary liaison to the CPO and external entities regarding procurement matters;
- Certify that procurement actions within the department comply with this Policy and other relevant policies including but not limited to:
  - a. Source selection method
  - b. Issuance of solicitations
  - c. Solicitation process
  - d. Determination of non-responsiveness
  - e. Vendor responsibility
  - f. Price justification
  - g. Recommendation for award
  - h. Vendor performance monitoring and reporting
  - i. Administrative contract management and close-out
- Represent the department in all procurement-related matters.

In addition, procurement approval authorizations required by the DCEC in this policy may be delegated to the CPO when the DCEC determines that procurements fitting specific criteria require approval of the DCEC only when there is a substantive reason identified by the CPO and/or Legislative Affairs in their designated procurement review roles. Any such delegation shall be in writing and shall state all criteria specific to the delegation.

#### **4) Electronic Contracting Routing System**

Once the vendor has been selected the department will draw up a contract with them. The approval process and routing system for the contract is as follows:

- 1) Contract information is entered into NIFS by the department, including funding source, codes and amount(s);
- 2) NIFS entry approved by department head or DCCO;

- 3) NIFS entry approved by OMB;
- 4) OMB certification to NIFA;
- 5) Capital funds approval by DPW as applicable;
- 6) County Attorney reviews for insurance as needed and approves as to form;
- 7) County Attorney designates if Legislative approval is required;
- 8) NIFS approval by County Attorney;
- 9) Approval by Chief Procurement Officer;
- 10) Approval by Deputy County Executive for Compliance;
- 11) Approval by Vertical Deputy County Executive for that Department;
- 12) Approval by Legislative Affairs;
- 13) If Legislative approval is required:
  - a. Legislative Affairs files the item with the Clerk of the Legislature
  - b. The Office of the Inspector General may review items prior to Legislative action
  - c. Legislature acts on the item
  - d. Once approved, the Clerk of the Legislature enters the applicable vote count information and submits the item for Comptroller review
- 14) If Legislative approval is not required, then Legislative Affairs submits the item for Comptroller review:
  - a. Review of legality, regularity, and/or correctness
  - b. Complete NIFA certification
  - c. Recommend requirement of NIFA approval
- 15) NIFA approval if required
- 16) Clerk of the Legislature certification

**C. Education, Communication, and Awareness**

All Commissioners, Department Heads, and DCCO shall attend Ethics Training to be offered by the DCEC and the CPO annually. The Ethics training will focus on the general provisions of the procurement and compliance policy, and the promotion of transparency and ethics in the contracting process. The CPO shall host and require attendance at periodic procurement trainings to ensure that procurement professionals and executives are knowledgeable of and consistently apply the County’s procurement policies and procedures, including trainings by the Office of the Inspector General. All DCCOs shall ensure that the county procurement and compliance policy is enforced within their respective departments. The CPO may require reassignment of DCCO functions within the department if the DCCO fails to attend required training.

#### **D. Enforcement of Policy and Discipline**

All County officials, Commissioners, Department Heads, DCCOs, and procurement staff shall be aware of and adhere to this Policy, including the County's Code of Ethics and related guidance contained in this Policy. All County employees are obligated to report promptly and directly any observed or suspected action of a criminal, corrupt, or fraudulent nature or any abuse or misuse of County property and resources as required in the Ethics policy to the independent Office of Inspector General's Hotline at (516) 571-IG4U (4448). Failure to do so may result in disciplinary action including but not limited to termination, demotion, reassignment, or other necessary corrective measures. If there is doubt as to whether a given matter requires Inspector General notification, this Policy requires that the matter shall be treated as requiring Inspector General notification. Procurement officials, managers, and supervisors are required to monitor staff to ensure staff awareness of the policy and ensure compliance, and to notify the DCEC of any noncompliance in this regard.

All County officials, Commissioners, Department Heads, DCCOs, and procurement staff shall also be aware that it is a crime to retaliate against, punish, threaten, harass, or penalize any person for assisting, communicating, or cooperating with the Inspector General.

#### **E. Risk Assessment and Monitoring**

The County shall implement procedures to assess risks resulting from procurement processes, and monitor and periodically audit those processes to ensure compliance with all procurement laws and policies. Adequate internal controls must be implemented and maintained to provide appropriate segregation of duties, accountability, secure data collection, reporting, and record keeping. Deviations from established policies and procedures and the resulting necessary corrective actions must be documented and communicated to the appropriate responsible authority, as well as the DCEC, and maintained in the County's records.

All Commissioners, Department Heads, and DCCOs shall ensure that notice of the independent Inspector General's Hotline to report fraud, waste, abuse and corruption is posted in their respective departments. The notice of the Inspector General hotline shall be supplied by the Office of the Inspector General. Notice of the County's confidential hotline also shall be posted in a similar fashion. The notice shall be supplied by the DCEC.

A committee composed of the DCEC, CPO, Director of Legislative Affairs, and a representative from the Comptroller's Office, the Office of the Majority Leader, the Office of the Minority Leader, the County Attorney's Office, and three rotating DCCOs shall meet twice a year to monitor and assess the procurement and compliance policy. The Office of the Inspector General shall be invited to attend such meetings upon the same notice given to the other attendees. The committee meetings will occur in May and October of each year and will be called by the DCEC. The rotating DCCOs shall be selected by the DCEC in consultation with the County Executive and the executive staff.

#### **F. Ongoing Program Improvement**

The DCEC and CPO shall ensure that appropriate modifications and improvements to the County's compliance and ethics programs shall be incorporated as necessary on an ongoing basis in response to identified risks, compliance violations, and recommendation from the above referenced committee.

### **III. Procurement Process**

#### **A. Departmental Procurement Responsibilities**

##### **1) Introduction**

While the Department of Shared Services Office of Purchasing has central responsibility for procuring goods and certain non-personal services for County agencies, the meaningful participation of all agencies in the procurement process is essential to meeting the County's procurement goals. Each department must have staff that conducts the department's procurements efficiently and effectively and in full compliance with the Policy. To ensure compliance, the head of each County department shall act as the Department Chief Contracting Officer (DCCO). Delegation of this role is allowed with the concurrence of the CPO. The DCCO shall be accountable for all the department's procurement activities and shall act as the department's primary liaison to the CPO. Throughout the oversight review and approval process, the DCCO shall monitor the proposed contract award's progress and address expeditiously any issues that arise prior to contract execution. For procurement of goods and non-personal services, the DCCO shall monitor and approve:

- a. pre-procurement planning and scheduling;
- b. drafting specifications;
- c. submitting requisitions to the Office of Purchasing;
- d. coordinating procurement activities with the Office of Purchasing and other departments as necessary;
- e. overseeing and evaluating contractor performance; and
- f. maintaining departmental procurement records and contract files.

The DCCO has the responsibility to monitor and approve all aspects of their department's procurement of personal services from the submission of a Request to Initiate and the drafting of a solicitation, through the administration of the contract and oversight of contractor performance. The department head shall serve as the DCCO until a DCCO is designated and approved.

##### **2) Requisitions**

When a department wants to acquire goods or non-personal services not covered by an existing contract, it must submit a requisition to the Office of Purchasing through the Advanced Purchasing and Inventory Control System ("ADPICS"). This requisition shall include the following elements:

- a. Specifications prepared in accordance with the requirements of the Policy and the criteria set forth below;
- b. Quantity of goods desired;
- c. Requested delivery date(s);
- d. Period of performance of services;
- e. Estimate of cost;
- f. List of known qualified vendors; and
- g. Justification for the purchase.

Essential information that cannot be included in ADPICS must be submitted by email referencing the related requisition.

### **3) Specifications**

When submitting a requisition, a department shall include recommended specifications that are drafted in accordance with the Policy and which clearly and accurately describe the department's needs. The specifications shall:

- a. permit maximum practicable competition;
- b. describe clearly the County's requirements without favoritism toward a vendor or a vendor's goods, services or construction;
- c. to the extent practicable, be generic in nature and emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet the County's needs;
- d. to the extent practicable, utilize accepted commercial standards, and limit unique requirements that would tend to favor a vendor or a vendor's goods service, or construction; and
- e. not limit the solicitation to a specific brand name unless with the approval of the CPO the DCCO determines in writing in the procurement file that only the specific brand name will meet the department's needs. The determination will be submitted with the requisition and shall explain the reasons for its conclusion, which may include:
  - i. the item is part of a system and only the brand name product is compatible with or can interoperate with that system efficiently; or
  - ii. only the brand name product can safely and/or efficiently meet the department's needs.

The department shall also set forth criteria it will use to evaluate the vendor's performance of the contract. These criteria must also be outlined in the contract. As stated above, to the extent practicable specifications are to be drafted in functional, generic terms to maximize competition. A department may specify a brand name product in its requisition only with approval of the CPO unless otherwise delegated. The DCCO must justify in writing in the procurement file that only the specified brand name will meet the department's needs. In addition, per section 103(5) of the General Municipal Law, specifications containing brand name components require approval by a vote of three-fifths of the members of the Legislature.

### **4) Justification**

Each requisition or procurement request must state a justification for the proposed purchase. The justification explains why the department needs to make the purchase. Standard justifications include but are not limited to:

- a. replacement required due to existing item having been consumed or being at the end of its useful life;
- b. upgrade of equipment required to improve productivity or efficiency (justification should include a brief explanation of how the upgrade will facilitate this improvement);
- c. workload volume increase (describe why volume increase requires new purchase);



- d. item required by new statutory, regulatory or collective bargaining mandate (identify the mandate);
- e. new or expanded activities (explain why these new activities are being undertaken); and
- f. health or safety protection (explain how proposed acquisition will improve health or safety of workers or public).

## 5) Cooperation with Office of Purchasing

Each department must cooperate fully with the Office of Purchasing. Each department must:

- a. provide the Office of Purchasing with all information and documentation requested in connection with processing a requisition or purchase order;
- b. assist the Office of Purchasing, if requested, in evaluating the responsiveness of bids;
- c. assist the Office of Purchasing, if requested, in negotiating contracts with vendors; and
- d. Provide evaluation and documentation of vendor performance.

## 6) Evaluation and Documentation of Vendor Performance

Departments shall evaluate and document vendor performance of all contracts including those executed by the Office of Purchasing on their behalf, except as specifically exempted below. A copy of each performance evaluation shall be maintained in the department contract file, and for contracts processed by the Office of Purchasing the original shall be transmitted to the Office of Purchasing for retention in the contract file.

### a. Content of Evaluations

Performance evaluations shall be recorded in writing in the procurement file and shall assess the vendor's performance in terms of its satisfaction of the evaluation criteria set forth in the contract. At a minimum, these criteria shall include:

- i. the extent to which the vendor delivered goods or services that met the stated specifications;
- ii. the timeliness of performance; and
- iii. the responsiveness of the vendor to department concerns or complaints.

### b. Frequency of Evaluations

For all service contracts above the "small purchase" limit, as defined in **Appendix B** to this Policy, that have been executed on behalf of a department, the department shall monitor the vendor's performance on an ongoing basis at least annually and upon completion of the contract for the full contract term. For goods contracts, and for procurements of service contracts below the small purchase threshold, a formal evaluation report shall be prepared only in cases of deficient performance. Notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the annual evaluation. For requirements contracts and blanket purchase order contracts that may be used by more than one department, the department that issued the contract is responsible for filing performance evaluations as indicated above. However, this does not preclude other departments from filing performance evaluations specific

to that department's task order(s) or purchase order(s), particularly when deficient performance is observed.

## **7) Department Contract Files**

The CPO shall ensure that copies of County contracts and other standard information regarding County contracts and vendors (including information relating to the vendor's qualification and performance evaluations, contract audits, and decisions regarding suspension and debarment) are reasonably available for public inspection as provided by law, with adequate protection for confidential information. Each department shall maintain files that contain all documentation pertaining to the solicitation, award, and management of each of its contracts, purchase orders, amendments, renewals and change orders including, but not limited to, a written copy of each report, record, justification, approval, determination, or filing that is required to be made by law or this Policy. The CPO may establish a publicly accessible database of contract information for this purpose.

### **a. Required Contents of Contract Files**

It is the policy of the County that copies of County contracts and other standard information regarding County contracts and vendors (including information relating to the vendor's qualification and performance evaluations, and contract audits) are reasonably available for public inspection, with adequate protection for confidential information. Files shall contain all documentation, including each report, record, justification, approval or determination required by law or the County's Procurement Policy, pertaining to:

- i. solicitation of vendors;
- ii. contract award;
- iii. management of the contract;
- iv. purchase orders;
- v. amendments, advisements, and change orders;
- vi. evaluations;
- vii. renewals; and
- viii. any other pertinent information.

### **b. Responsibility for Maintaining Contract Files**

It shall be the responsibility of the Department of Shared Services to maintain such contract files for contracts to purchase goods and services through its Office of Purchasing. It shall be the responsibility of the Department of Public Works ("DPW") to maintain such contract files for all public works contracts procured by DPW. Finally, it shall be the responsibility of each individual department to maintain such files for all contracts procured by the department.

## **8) Electronic Documents and Signatures**

To the extent permissible under applicable law and this Policy, and as feasible based on County information systems, departments shall store the contents of contract files electronically, and may use and may allow vendors to use, electronic documents and signatures in the course of procurements. Any system used for storage of procurement-related documents in electronic form must be such as to provide

for the security and integrity of the documents contained in it to an equal or greater degree than a traditional hard copy filing system.

## **9) Contents and Retention of Contract Files**

Contract files must be maintained in their entirety throughout and following the solicitation and contract administration processes as required by County records retention requirements. The contract file must at a minimum include the following as applicable per the method of source selection and solicitation:

- Request To Initiate
- Evidence of market research
- Presolicitation Review
- Solicitation Document including all attachments
- Notice to OMA of intended solicitation and related correspondence
- Notice to the union of intended solicitation and contract award and related correspondence
- Evidence of vendor outreach/Good Faith Efforts
- Cost estimate
- Sole source justification from the contracting department
- Sole source justification from the vendor
- Solicitation advertisement(s)
- All solicitation amendments
- Bidders List
- Bids Received
- Bid Tabulation
- Proposals Received
- Findings of non-responsiveness and related correspondence
- Findings of nonresponsibility and related correspondence
- Proposed Contract and all attachments
- Vendor Integrity and Disclosure Forms
- Reference Checks
- Insurance
- Licenses
- Performance Evaluation for prior vendor performance
- Other vendor responsibility information gathered
- Responsibility Determination

- Recommendation For Award
- Award narrative explaining the conduct of the solicitation, vendor selection process, justification for the proposed award, and determination of cost reasonableness
- Delay justification memorandum
- Notice of award
- Certified contract and all attachments
- All significant vendor correspondence
- Performance evaluations
- Record of vendor performance issues and related correspondence
- Contract termination, suspension, or default correspondence
- Contract amendments
- Proposed renewal agreement, all attachments, and justification
- Certified renewal agreement and all attachments
- Contract assignment agreements and all attachments, related information, and justification
- Contract assignment justification
- Subcontractor Vendor Integrity and Disclosure Forms, agreements, approval, and related information
- ADPICS requisitions, purchase orders, and blanket purchase contracts
- ADPICS purchase order amendments, and renewals
- Department of Shared Services Office of Purchasing correspondence regarding requests for blanket purchase contracts, amendments, and renewals

All contract files shall be retained in their entirety within the County for a minimum of six years beyond the termination of the contract by each department before final disposition unless otherwise required by Schedule CO-2 as issued by the NYS Department of Education pursuant to record retention procedures of the County.

#### **10) Requests by Elected Officials for Contract Documentation**

Whenever an elected official of the County requests documentation relating to the solicitation or award of any County contract, the CPO and the department shall promptly provide such documentation, with adequate protection to ensure that the confidentiality of information whose confidentiality is protected by agreement or law shall not be further disclosed, or shall promptly respond to the requesting official with reason why such documentation cannot be provided. If the CPO or the department is unable to provide the requested documentation within ten business days of the date the request is received, the CPO or the department shall within such time deliver to the requesting official a statement of the reasons the documentation cannot be promptly provided and shall include in such statement a timetable within which the documentation will be provided. Any request submitted directly to a department shall be submitted to the CPO as well for informational purposes. The department shall coordinate with the CPO in

preparation of any response to the elected official request, and any such response from a department to such elected official request shall be submitted to the CPO as well.

### **11) Central Contract Registry**

Information on contracts and vendors shall be made available on-line in read-only format to both government officers and employees and members of the public to the extent feasible. Requests for contract information not contained in these databases, other than requests made pursuant to this Policy, shall be made to the Records Access Officer pursuant to Article 6 of the Public Officers Law (the Freedom of Information Law) with copy provided to the DCCO.

### **12) Office of the Inspector General**

The Office of the Inspector General shall have full and unrestricted access to all files, documents and records referred to throughout this Policy, irrespective of format or storage medium.

## **B. Overview of Solicitation Preparation and Conduct**

Purchasing high-quality goods and services at the lowest net cost to support the mission of the County requires effective needs assessment, market research, specification development, vendor outreach, solicitation, evaluation of offers including vendor responsiveness and responsibility review, negotiation of terms and conditions as applicable, award justification, and oversight approvals. The number one priority of procurement staff in the conduct of County solicitations is to achieve high-quality, cost-effective contracts in accordance with the law that satisfy the needs of the County and protect its interests. Given the financial, legal, and operational ramifications of inadequate procurement practices, it is incumbent upon those developing and conducting procurements to apply best industry practices to ensure successful and effective contracting throughout the County. Successful public procurement requires that fair and open competition be applied to the maximum extent practicable and as required by the various methods of source selection defined in the Countywide Procurement Policy. The following guidelines for each element of effective procurement listed above is provided as guidance in the efficient and effective development and conduct of solicitations in the County. As discussed in detail below, the most important parts of solicitation preparation are (a) Needs Assessment, (b) Market Research, (c) Specification Development, (d) Vendor outreach, (e) Solicitation, (f) Evaluation of Offers, (g) Negotiation of Terms and Conditions, and (h) Award Justification.

### **1) Needs Assessment**

Before deciding to procure goods or services, the user must identify with specificity what particular goods or services are required to be procured and ensure that the required goods or services are not already available on an existing blanket order or requirements contract. For required goods or services that must be procured, the user shall document the needs to be satisfied by the procurement, the specific goods or services required, units of issue, quantities for all goods/services, service levels, operational conditions that may impact delivery of goods or services, required timeframe or schedule, cost estimates, applicable labor laws, licensing or certification requirements, and any other material requirements of the procurement. All of this information is necessary to develop an effective specification and solicitation, and to communicate clearly to the vendor community the County's requirements.

## **2) Market Research**

Market research is required to determine whether goods and services that will satisfy the needs of the County are available in the marketplace. Market research will identify potential vendors, indicate differences in various product and service offerings, and provide estimated cost data. In general, it is advantageous to identify at least three vendors capable of providing the goods and services required by the user. Also, given the County's requirement that all vendors participating in solicitations must be registered as indicated in the County's website, market research may identify unregistered potential vendors that may choose to become registered in anticipation of an upcoming solicitation, thereby increasing the potential pool of vendors available to the County. Market research may also result in a determination that specified goods or services must be acquired as a sole source solicitation if there are no other vendors available to meet the needs of the County.

## **3) Specification Development**

Specifications must answer the following questions:

- a. What specific goods or services are required?
- b. Why are the goods or services required?
- c. Who requires and will be accepting the goods and services?
- d. How must the required goods or services be delivered?
- e. Where must the goods or services be delivered?
- f. When must the goods or services be delivered?

Specifications must state every material requirement of the County. It must identify to the extent practicable all legal, license, certification, experience, and service level requirements. For goods, it must specify the physical characteristics and/or performance requirements to establish a basis of fair comparison of different vendors' offerings. Any element of the good or service provision that is not expressed in a specification cannot be used as a basis for rejecting that good or service. Therefore, failure to include a material requirement in a specification may result in a failed solicitation or acceptance of an offering that does not best suit the County's needs.

For goods, specifications may be based on a bid standard identified by brand, model, and any other essential material characteristics when solicited as bid standard "or equal," which language shall be stated in the solicitation and which allows vendors offering competing brands to submit documentation showing its product to be equivalent to and meeting the minimum standard characteristics of the bid standard.

## **4) Vendor Outreach**

Vendor outreach is essential to perform effective market research, to identify any disparities between the County's specified requirements and the available offerings in the marketplace, and to promote participation in solicitation opportunities. Per the County's vendor outreach policy, procurement staff are encouraged to utilize Requests For Information (RFI) or Request For Expressions of Interest (RFEI), pre-solicitation conferences (before advertising the solicitation), and pre-bid conferences (after advertising the solicitation) to communicate the County's needs to vendors, solicit feedback and suggestions, gauge vendor interest, and clarify ambiguities. Records of attendance and meeting minutes

must be kept for all formal RFI and RFEI meetings, pre-solicitation conferences, and pre-bid conferences, and those records shall become part of the County's official procurement records.

RFIs and RFEIs are particularly useful when the County is considering developing a solicitation for goods and/or services that have never been procured previously and with which the County has little or no experience in the application of the required goods or services. An RFI is used to obtain general information regarding specified goods and/or services. An RFI does not result in a contract. An RFEI generally is service-oriented, and is used to obtain information regarding suggested approaches to a specified opportunity, challenge, or initiative. An RFEI may be used to gather information that may inform a subsequent solicitation, or it may be used as a version of an RFP that is intended to result in a contract, in which case this must be stated in the solicitation and the solicitation must be conducted in the same manner as an RFP. An RFI, or RFEI that will not result in a contract, is issued as a formal open invitation to the vendor community to provide to the County the vendor's views, offerings, and concerns with respect to particular goods and/or services. As with an RFP, the RFI/RFEI includes an explanation of what is requested of vendors, when responses are due, whether a meeting will be scheduled to discuss the RFI/RFEI prior to the due date, and any other relevant information necessary to inform vendors of the questions the County seeks to answer. RFIs and RFEIs may include written submissions only, but often a meeting with vendors prior to submission of written responses is useful to identify prominent issues and opportunities that may be of particular interest to the County. Such RFI/RFEI is not a solicitation, but rather a process by which the County may gather information about goods and services that may be useful for clarifying the County's needs and crafting an appropriate specification and solicitation to satisfy those needs.

Pre-solicitation conferences are useful when preparing complicated procurements, such as those involving construction services, highly specialized equipment acquisition, and complex service provision. Pre-solicitation conferences can help the County clarify specifications and understand market offerings and concerns, thereby affording the County the opportunity to improve its specifications and solicitation prior to official issuance. Formal invitation to a pre-solicitation conference is issued in the same manner as for formal sealed bidding or request for proposals, as applicable to the specific goods and/or services to be procured. The invitation should include a draft specification and solicitation for vendors to review and comment on at the conference or otherwise in writing to the point of contact. Following the conference, the County then uses the input provided by vendors to aid in crafting the official specification and solicitation.

Pre-bid conferences often are useful when conducting a solicitation with complex requirements that may benefit from clarification, when vendors have significant questions that must be resolved prior to the opening, when it is necessary to provide a walk-through of County locations where goods and/or services are to be delivered, and under other circumstances where it is clear that an open discussion of the solicitation and its requirements will be beneficial to the County and/or the vendor community. Invitations to pre-bid conferences are advertised in the same manner as the solicitation for which they are being held.

In addition to using the above methods to ensure effective vendor communication and input in the development and conduct of a solicitation, it is also worthwhile to emphasize the importance of identifying and including certified Minority- and Women-owned Business Enterprises (M/WBE), Disadvantaged Business Enterprises (DBE), and Service-Disabled Veteran-Owned Business Enterprises (SDVOB) in any vendor outreach effort to the extent feasible. All such outreach should be coordinated with the Office of Minority Affairs and documented in the procurement file.

## **5) Solicitation**

Solicitation starts upon advertisement and ends on the bid or proposal due date and time. No solicitation or specification related to such solicitation may be released outside the County prior to advertisement without prior approval of the DCCO responsible for the solicitation. During the solicitation period, communication between procurement and program staff on the one hand and vendors on the other is strictly regulated. All such communications must be through official channels, and it must be clear that all material instruction or clarification of the requirements of the solicitation must be issued in writing to all potential bidders or proposers. To the extent possible, vendors with questions should be directed to the solicitation for answers to questions posed. Questions which are not relevant should be identified as such and not answered, often with notice to the vendor that all pertinent information necessary to provide a response is provided in the solicitation. If the County determines that a question must be answered or a requirement must be clarified, the buyer will issue an addendum to all potential bidders or proposers stating the question and answer or clarification as applicable. Procurement staff shall not answer any material questions of vendors in any manner other than the one described here. Program staff shall not discuss any open, advertised solicitation with any vendor, and shall refer any vendor that has a question to the appropriate buyer. In the event that a vendor requests readily available public information that it deems to be relevant to the solicitation, the buyer will release that information as an addendum unless the DCCO determines in writing in the procurement file that it is not in the best interests of the County to release the requested information. All solicitations shall be conducted using a format or template approved by the County Attorney's Office.

## **6) Evaluation of Offers**

Contracts are awarded to the lowest responsive, responsible bidder or most advantageous proposer. Evaluation of offers (e.g. bids or proposals) submitted by vendors requires ranking by price (for bids) or by evaluation score (for proposals) as indicated in the solicitation, as well as affirmative determinations by the DCCO that the proposed awardee is responsive and responsible as defined in the Countywide Procurement Policy. For solicitations awarded based on price alone, as for bids and mini-bids, all offers by vendors shall be included in a bid tabulation that includes the following information:

- a. The title of the solicitation
- b. The solicitation ID number
- c. The date of the bid opening
- d. All of the vendors that submitted bids and their offered price(s)
- e. The name, title, and signature of the reader of the bids
- f. The name, title, and signature of the witness

The bid tabulation shall be included in the solicitation file. Following generation of the bid tabulation, the buyer shall review the apparent low bid for responsiveness and responsibility, and verify that the arithmetic in the bid is correct. If the vendor is found to be non-responsive or non-responsible, the process for such determination as stated in the Policy shall be followed. If the arithmetic of the apparent low bid is determined to be erroneous and the price is revised, a revised bid tabulation shall be created by the buyer and ranked to identify the apparent low bidder. If after revision of the bid tabulation the apparent low bidder has changed, the low bidder on the revised form shall be considered before considering any other vendor. This process shall be repeated as necessary until the low responsive, responsible bidder is identified and determined to be the intended awardee.



For solicitations awarded based on best value (i.e. most advantageous combination of cost, quality, and efficiency as defined in the solicitation) as for RFPs and Streamlined Competitive Proposal Processes, vendors shall be ranked pursuant to the Policy and as defined in the solicitation. All technical and price evaluations and summaries shall be included in the solicitation file. Responsiveness and responsibility reviews shall be conducted as required by the Policy, and written determinations shall be included in the solicitation file. As is the case with bids, if arithmetic errors are found to alter the ranking of the proposals, the revised ranking reflective of the price correction(s) shall be used to identify the most advantageous proposal.

## **7) Negotiation of Terms and Conditions**

Negotiation of price solely with the lowest responsive, responsible bidder or most advantageous proposer is allowed. Negotiation of terms and conditions generally is allowed only for solicitations that will result in awards based on best value. Taking exception to terms and conditions in competitive bid solicitations is prohibited and is grounds for rejection of the bid. Effective negotiation requires a thorough understanding of the terms and conditions at issue, and buyers may have proposed modifications to the terms and conditions which must be reviewed and approved by the County Attorney. Negotiation also requires an understanding of the County's relationship with the vendor and the related industry. Awareness of relevant industry standards and trends, price benchmarks and indices, vendor performance history, and the nature and extent of other current contracts between the vendor and the County may improve the County's bargaining position. It is also important to establish before entering a negotiation what elements of the requirements of the solicitation may and may not be negotiated, whether for legal, financial, or operational reasons. All contracts shall be in a form or template approved by the County Attorney's Office.

## **8) Award Justification**

As required in the Policy for the Recommendation For Award, it is essential that the DCCO affirm that the proposed awardee of a contract has been determined to be responsive, responsible, and the lowest bid or most advantageous proposal. Each solicitation should include as part of the solicitation record an award justification stating the above determinations and addressing any adverse information that otherwise may be cause to find the vendor non-responsible as part of the responsibility determination process.

## **C. Decision to Procure Personal Services**

The decision to procure personal services shall be made in writing in the procurement file by the DCCO in accordance with this rule. Factors to be considered in making such decision shall include, but not be limited to, whether using a procurement is:

- 1) desirable to develop, maintain, or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided;
- 2) cost-effective; or
- 3) necessary to:
  - a. obtain special expertise;
  - b. obtain personnel or expertise not available in the department;
  - c. provide a service not needed on a long-term basis;

- d. accomplish work within a limited amount of time; or
- e. avoid a conflict of interest.

## **D. Pre-Solicitation Review**

### **1) Definition**

A pre-solicitation review is the process by which a department, after determining the necessity of the procurement and the need to contract out, defines the existing market for the goods, services, or construction required, estimates the expected cost, and determines the most appropriate method of procurement.

### **2) Policy**

Departments shall perform a pre-solicitation review for:

- a. sole source procurements of \$500 or more for goods and/or services;
- b. personal services procurements of \$1,000 or more;
- c. all competitive solicitations of greater than \$10,000; or
- d. emergency contracts are exempted from this requirement.

### **3) Categorical Review**

Upon approval by the CPO, the DCCO may determine that a single pre-solicitation review be conducted for a particular category of contracts. Such determinations shall be reevaluated annually.

For a list of the required contents of the PSR, see **Appendix C**.

## **E. Cost-Plus Reimbursement Contracts**

A cost-plus-percentage-of-cost (“cost-plus”) reimbursement contract shall be used only when the DCCO determines with CPO approval that it will be less costly to the County than any other type or that it is otherwise in the best interests of the County to obtain the required goods, services, or construction by using such a contract, and that the proposed vendor’s accounting system is adequate to allocate costs in accordance with generally accepted government accounting principles and will permit timely development of all necessary cost data in the format required. In addition, whenever a cost-plus-percentage-of-cost contract is used, it shall specify the maximum allowable expenditure.

## **F. Specifications**

### **1) Policy**

Specifications are used to obtain goods and services to fulfill the County’s needs in a cost-effective manner, considering, to the extent practicable, the costs of ownership and operation, as well as costs of acquisition. Therefore, specifications shall:

- a. permit maximum practicable competition;
- b. describe clearly the County’s requirements without favoritism toward a vendor or a vendor’s good or service;

- c. to the extent practicable, be generic in nature and emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet the County's needs; and
- d. to the extent practicable, utilize accepted commercial standards, and limit unique requirements that would tend to favor a vendor or a vendor's good or service.

## **2) Authority to Contract for Drafting of Specifications**

The drafting of specifications may be performed by a vendor only upon a determination by the DCCO that it is in the best interest of the County to do so. Any vendor participating in the drafting of specifications shall not participate, in any manner, in a response to any subsequent solicitation utilizing such specifications, in whole or in part, unless, after reviewing the specifications, the DCCO determines, with CPO approval, that the specifications do not favor a vendor or such vendor's good or service, and it is in the County's best interest to allow such participation and the basis thereof. Such prohibited participation shall include, but not be limited to, participating as a contractor or a subcontractor, or as a consultant to any contractor subcontractor, responding to the solicitation using the specifications. The provisions of this subdivision shall apply to any vendor that has drafted any portion of the specifications used in a procurement, regardless of whether such vendor's services were procured specifically for the drafting of those specifications, were procured as general consulting services, or were donated.

## **3) Brand Name Specifications**

When a brand name only specification is used, the DCCO shall document and the CPO and subsequently the Legislature must approve the reasons for its use. When brand name or equal specifications are used, one or more brand name(s) and the salient characteristics of the brand name(s) shall be set forth in the solicitation.

## **4) Price/Cost Analysis**

Prior to vendor selection, the DCCO shall determine that the contract price is fair and reasonable by using price analysis and, where appropriate, cost analysis, as these terms are defined in this Policy, to make this determination.

## **G. Vendor Outreach**

To improve competition for contracting opportunities, and particularly to enhance opportunities for MWBE, DBE, and SDVOB vendors, the following policy is implemented to strengthen and diversify our vendor base:

- 1) For all competitive small purchases, notice of solicitation shall be sent to all eligible registered vendors.
- 2) Departments proposing to solicit any formal sealed bid or other competitive solicitation over \$10,000 shall notify OMA at least 30 days prior to advertising the solicitation. OMA may choose to conduct general vendor outreach for any given solicitation, but the solicitation itself shall not be made public until formal release of the solicitation. OMA may issue a waiver of this requirement if the need is of such urgency that 30 days' notice is not possible.
- 3) To the extent feasible, certified M/WBE, DBE, and SDVOB vendors shall be considered and given an opportunity to participate to all solicitations.

- 4) Advertising periods for solicitations over \$10,000 shall be at least 15 days. Any advertising period less than 15 days must be justified in writing in the procurement file by the DCCO requesting the procurement.
- 5) To survey the marketplace and gauge vendor interest for specific solicitations, departments are encouraged to use:
  - a. Requests for Information (RFI);
  - b. Requests for Expressions of Interest (RFEI);
  - c. Pre-solicitation conferences prior to advertising; and
  - d. Pre-bid conferences prior to solicitations response due date (opening date).
- 6) All meetings related to a specific solicitation shall be documented in the procurement file.
- 7) Single or low vendor response analysis shall be documented in writing by the DCCO and included in the Recommendation For Award for all formal solicitations (over \$10,000) as follows to ensure maximum practicable competition was obtained when only one or two responses were received:
  - Review the specification to ensure that it is not unduly restrictive so as to limit competition. Some factors to consider in this regard include: 1) Is any component of the solicitation so restrictive that only one or a small number of vendors can respond to the solicitation? 2) If so, were those vendors notified of the solicitation?
  - Was the solicitation advertised and posted on the County website as required?
  - Would the County be likely to obtain greater vendor participation by advertising in other venues (e.g. New York State Contract Reporter, trade journals, other local media, etc.)?
  - Was the commodity code used to conduct the solicitation appropriate? Were appropriate vendors registered with the County for that commodity code or otherwise notified?
  - Is the market for the specified goods or services structurally limited (i.e. are there geographic, capital, vendor capacity, service schedule, or other requirements) that may inhibit greater vendor participation?
  - Was the solicitation conducted in a manner consistent with this Policy?
  - Survey vendors that received notice of the solicitation but did not respond to determine why the vendor chose not to do so. Typical responses include but are not limited to:
    - The vendor did not see the advertisement
    - The vendor does not offer the specified goods/services—as a follow-up, ask if the specification is too specific to a competitor’s product (is this specification “brand-specific” or written to one manufacturer’s or service provider’s offering?)
    - The vendor is too busy with other work at this time
    - The vendor is not interested in pursuing a County contract at this time—as a follow-up, ask why this is the case

- 8) A summary of the above findings must be documented by the DCCO as part of the Recommendation For Award to the proposed vendor and included in the contract package for review by oversight entities.
- 9) 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.

Whenever feasible, competitive solicitations of \$50,000 or greater shall be advertised in the New York State Contract Reporter (NYSCR) in addition to other required advertising placements. The DCCO shall justify in writing and include in the procurement file any decision not to solicit such a contract in the NYSCR.

## **H. Responsiveness of Bids/Proposals**

### **1) Policy**

A responsive bid or proposal is one that complies with all material terms and conditions of the solicitation and all material requirements of the specifications. The DCCO shall make a determination of responsiveness prior to award. For requirements contracts and blanket purchase order contracts that may be used by more than one department, the DCCO of the department issuing the solicitation shall make the determination of responsiveness.

### **2) Determination of Non-Responsiveness**

If the lowest price bid or any proposal is found non-responsive, a determination, setting forth in detail and with specificity the reasons for such finding, shall be made by the DCCO. A copy of such determination shall be mailed, faxed, or emailed to the non-responsive vendor and the CPO no later than two business days after the determination is made, and the department shall inform the vendor of the right to appeal as set forth herein. Such notice shall also inform the vendor that, if an appeal is taken, award of the contract shall be stayed pending the determination of the CPO, unless with the approval of the CPO the DCCO makes a determination and informs the vendor that the award will not be stayed because proceeding with the award without delay is necessary to protect substantial County interests. Standards of responsiveness are listed in **Appendix D**.

## **I. Vendor Responsibility and Appeal of Determination of Non-responsibility**

### **1) Policy**

- a. Purchases shall be made from, and contracts shall be awarded to responsible prospective contractors only.
- b. The award of a contract to a contractor based on lowest evaluated price alone can be false economy if there is subsequent default, improper or exaggerated claims, late deliveries, or other unsatisfactory performance resulting in additional contractual and administrative costs. While it is important that County purchases be made at the lowest price, this does not require an award to a contractor solely because that contractor submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

### **2) General Standards**

- a. 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.
- b. Factors affecting a contractor's responsibility may include:
  - i. financial resources;
  - ii. technical qualifications;
  - iii. experience;
  - iv. organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;
  - v. a satisfactory record of business integrity;
  - vi. where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property, funds, or other assets, accurately delineate costs, and attribute them to their causes; and
  - vii. compliance with requirements for the utilization of small, minority-owned, and women-owned businesses as subcontractors.
- c. Failure of a firm to provide relevant information specifically requested by the DCCO or delegee may be grounds for a determination of non-responsibility.

For additional information regarding business characteristics that may affect a vendor's responsibility, please see **Appendix E**. In addition, a sample responsibility determination data search checklist is provided in **Appendix T**.

## **J. Recommendation For Award (RFA)**

### **1) Policy**

The DCCO shall prepare a Recommendation for Award for procurements for goods greater than \$10,000 and for personal services \$1,000 or greater.

### **2) Record**

The Recommendation for Award shall be incorporated as part of the solicitation record that shall be approved by the DCCO and the CPO.

### **3) Approvals**

The Recommendation for Award shall be approved by the DCCO and subsequently requires approval of the CPO. The CPO may delegate approval to the DCCO.

For additional information regarding the Recommendation for Award please see **Appendix F**.

## **K. Vendor Protest**

### **1) Policy**

Any vendor may protest a determination of any procurement actions pursuant to this section, unless another appeal or protest provision is provided in this Policy. Emergency procurements and small purchases (those under \$10,000.00) are not subject to vendor protests.

## **2) Time for Protest**

A protest shall be made within ten days after the protesting vendor knows or should have known of the facts that prompted the protest but no later than ten days after publication of the notice of award.

## **3) Form and Content of Protest**

The protest shall be filed with the Department Head and shall briefly state all the facts or other basis upon which the vendor contests the department's decision. Supporting documentation, if any, shall be included. If a vendor has already been selected for the procurement, the Department Head shall, upon receipt of the protest, mail a copy of the protest to the selected vendor. Filing of the protest shall be accomplished by actual delivery of the protest documents to the office of the Department Head. The vendor shall also send a copy of its protest to the DCCO and the CPO. When a vendor is protesting a decision by the Department Head, the protest is to be directed to the CPO and any response is to be provided by the CPO as described below, and the vendor shall provide a copy of the protest to the Department Head.

## **4) Department Head/CPO Determination**

The Department Head//CPO may, in their sole discretion, invite written comment from the selected vendor (if any) or other interested party, and/or convene an informal conference with the protesting vendor, the selected vendor, and/or any other interested party to resolve the protest by mutual consent. The Department Head's/CPO's determination with respect to the merits of the protest shall be mailed to the protesting vendor and the selected vendor (if any) within thirty days of receipt of the protest documents. The determination shall state the reasons upon which it is based. Copies of all documents required by this paragraph shall be forwarded to the CPO as such documents become available to the department. The Department Head's determination shall be final. The procurement action under protest shall not be stayed unless the Department Head with CPO concurrence determines that it is in the County's best interest to delay the action.

## **L. Compliance Review and Contract Approval Path**

Compliance review requires that all contract approvers conduct a thorough and non-duplicative review of material contract elements including, but not limited to, review of the contract as to form, funding, execution, inclusion of necessary supporting documents, insurance, vendor disclosures, and award justification. To ensure that appropriate review is conducted by all contract approvers, the County has established a Compliance Review policy in **Appendix AC**. In addition, details regarding the contract approval path are included in **Appendix G**.

## **M. Office of the Inspector General Review of Contracts**

The Inspector General may choose to review any aspect of a County solicitation, award, or contract administration at any time. With respect to review of proposed awards that require Legislative approval, per Charter section 300-A the department proposing the award must indicate if to the department's knowledge the OIG has investigated or reviewed the proposed contract, and if so what the findings were.

## **N. Comptroller Review of Contracts**

Contracts must be approved by the County Comptroller. As per section 402 of the Nassau County Charter the Comptroller, among other things, examines and approves all contracts, purchase orders, and other documents by which the County incurs financial obligations.

In this role the Comptroller reviews contracts to determine that:

- 1) Funds are available for the contract;
- 2) The contract's cost and payables structure are sound; and
- 3) The Comptroller determines which contracts require NIFA approval.

**O. Nassau County Interim Finance Authority (NIFA) Review of Contracts**

Some contracts must be approved by NIFA. NIFA reviews personal services contracts equal to or greater than \$50,000. Some exceptions apply related to potential fiscal impact upon the County, method of source selection, and other issues. The County Comptroller determines which contracts require NIFA approval.

**P. County Procurement Systems**

All procurements shall be developed, solicited, reviewed, and approved using countywide financial and procurement systems to ensure uniform conduct, management, and reporting of procurement actions. Systems required to be used include the Advanced Purchasing and Inventory Control System (ADPICS), the Electronic Contract Routing System (ECRS), the Data Vault, the Solicitation Tracking System (STS), and the Vendor Portal. These systems have been developed and implemented to ensure secure, consistent, and transparent processing and reporting of the County's procurement data. It is essential that all County officials and staff performing procurement-related functions and County vendors use these systems as designed to ensure that all procurements comply with the laws, policies, and procedures required by the County. For a description of the procurement systems utilized by the County, see **Appendix H**.

**Q. Procurement Timelines**

- New contracts solicited by Request for Proposals (RFP) should be initiated no later than ten months prior to the anticipated execution.
- New contracts solicited by Formal Sealed Bid with estimated value in excess of \$50,000.00 should be initiated no later than ten months prior to anticipated contract execution.
- New Sole Source contracts for goods and non-personal services with value in excess of \$50,000 should be initiated no later than nine months prior to anticipated contract execution.
- New Sole Source contracts for goods and non-personal services with value of \$50,000.00 or less should be initiated no later than six months prior to anticipated contract execution.
- New contracts to be solicited by Streamlined Competitive Proposal Process should be initiated no later than eight months prior to anticipated contract execution.
- New construction solicitations should be initiated no later than ten months prior to anticipated contract execution.
- New construction-related professional services solicitations should be initiated no later than ten months prior to anticipated contract execution.
- Small purchases should be initiated no later than four months prior to anticipated purchase order effective date.
- Direct Purchase Orders should be initiated no later than three months prior to anticipated purchase order effective date.
- NYS Office of General Services (OGS) procurements should be initiated no later than nine months prior to anticipated contract execution.



- Intergovernmental, Cooperative, and Government-to-Government goods and/or non-personal services procurements other than OGS and Nassau County Community Rehabilitation Plan (CRP) procurements should be initiated no later than eight months prior to anticipated contract execution.
- Preferred Source procurements for goods and non-personal services in excess of \$80,000 should be initiated no later than nine months prior to anticipated contract execution.
- Preferred Source procurements for goods and non-personal services of less than \$80,000 should be initiated no later than six months prior to anticipated contract execution.
- Contract amendments should be initiated no later than six months prior to anticipated contract execution.
- Contract advisements should be initiated no later than three months prior to anticipated contract execution.

## **R. Multi-Year Contracts**

It is the policy of Nassau County to promote efficiencies and realize economies of scale by utilizing contracts with multi-year terms to the extent practicable. Terms of up to five years with or without renewal options are encouraged whenever appropriate. In certain instances, such as for client services contracts where long-term relationships between the client and the provider are beneficial, terms in excess of five years may be utilized with the approval of the CPO. A contract term should not be reduced to avoid oversight review when a longer term is more appropriate. Please see **Appendix S** for sample multi-year term language.

## **S. Retroactive Contract Management**

It is the policy of Nassau County to process contracts timely and obtain all required contract approvals prior to the contract term start date whenever possible, and to minimize the need for retroactive contracts. The County has established guidelines that Departments shall follow to avoid the need to issue a retroactive contract, and to manage contracts that are likely to be retroactive prior to final contract approval.

The County recognizes the importance of processing contracts timely and presenting them to oversight in advance of the contract start date. The following causes of retroactive contract submissions have been identified:

- 1) The budget typically is finalized and loaded into the financial system late in the year, while many of the County's contracts have a term of January 1 through December 31. Although preliminary steps to draft an anticipated replacement contract often are taken prior to final budget approval, it is not possible to execute or process the contract prior to that point. Once the budget is approved, there is inadequate time to obtain oversight approvals prior to the beginning of the contract term on January 1.
- 2) Some contracts have one-year terms and multiple annual renewal options. The result is that annual contract actions (amendments or renewals) requiring significant time and effort on the part of both the vendor and the County must be processed annually, increasing the likelihood that a contract will be retroactive.
- 3) The County recently has developed and implemented systems that will improve management of the contract portfolio, but it will take time to establish a complete set of contract data and to implement best practices in all departments to take full advantage of the new databases.
- 4) Vendor integrity and disclosure documents typically are requested by departments when contract awards

are being prepared, which may cause substantial delays in processing the award. Vendor integrity and disclosure documents should be requested well in advance of an intended or possible award.

## **Reducing Retroactivity**

The following strategies shall be employed to prevent the need for retroactive contracts and minimize their occurrence:

- 1) Make contracts effective upon the date of final execution and approval or later when applicable
- 2) Initiate solicitations timely per the Procurement Timelines stated in Section III(Q) above.
- 3) Request submission of vendor integrity and disclosure forms six months prior to current contract expiration date; review upon receipt and request revisions and/or additional information immediately
- 4) Advise the CPO of any adverse or potentially adverse vendor information when it is identified.
- 5) Review contract portfolio monthly to identify contract actions that are behind schedule, and upcoming required contract actions
- 6) Escalate internal or external follow-up requests in writing within two weeks as necessary
- 7) Review requests submitted or to be submitted to the Office of Purchasing quarterly, and work with Purchasing to develop strategies to manage the overall workload including building additional capacity to reduce the volume of requests:
  - a. combine anticipated needs for the year
  - b. add contingency or cost of living adjustments if applicable
  - c. use a multi-year term subject to out-year funding
  - d. request multi-year blanket order contracts for routine ongoing needs
- 8) Ensure that funds are approved, scheduled, and reserved as needed at the start of the contract action
- 9) Complete the vendor Responsibility Determination and Recommendation For Award four to five months prior to expiration of the current contract or required contract start date as applicable
- 10) Report pending and anticipated retroactive contract lapses monthly to the Chief Procurement Officer

Transitioning the County's Nonprofit client services contracts from one-year terms to multi-year terms subject to available appropriations would provide several benefits:

- 1) Multi-year terms allow departments to stagger contract expirations, thereby lessening the number of contracts per year to be processed. This in turn enables buying staff to provide greater assistance to vendors to ensure that all necessary documents are submitted correctly and on time, to document vendor performance, and to perform other essential procurement and contract administration tasks.
- 2) Multi-year terms allow departments to provide annual funding allotments and cost of living adjustments (or COLA's) using advisements.
- 3) Multi-year terms reduce the administrative burden placed upon vendors, providing more time to perform functions directly related to client services.
- 4) Multi-year terms lessen the financial strain experienced annually by many Nonprofit entities due to delays in contract processing and payments.
- 5) Multi-year terms for client services contracts are in many cases a best practice as this structure supports continuity of services and the establishment of long-term relationships between the client, the service provider, and the County, which may promote higher service levels and improved results for the client.

Applying multi-year terms to contracts for services other than client services also is beneficial. Requirements contracts with multi-year terms provide needed capacity for most commonly-required goods and services for which specific needs are anticipated to arise over time. Such contracts reduce the need to rush project-specific solicitations to contract while unforeseen needs go unmet, or alternatively, directing a vendor to perform work at risk.

Technology is a crucial element of effective contract portfolio management including preventing retroactive contracts. The Electronic Contract Routing System (ECRS), Solicitation Tracking System (STS), and the Vendor Portal offer several important benefits:

- 1) They provide a standardized and consolidated platform for tracking and managing County contracts and required vendor disclosures and information.
- 2) They ensure adherence to the County's procurement policies and procedures.
- 3) They collect data necessary to track and report metrics essential for good management of the portfolio, including retroactivity, cycle times, and volume by solicitation method and department.
- 4) In the future they will prompt departments when solicitations must be initiated and support reporting functions to flag items that are behind schedule or otherwise at risk.
- 5) They ensure that work in process is not lost.
- 6) They provide an archive of processed documents.
- 7) They will lead to accelerated workflow, reduced processing cycle times, and reduced need for paper, equipment and materials.

## **T. Compliance Review Responsibilities**

Ensuring that the County conducts its procurements in an open and transparent manner and enters into contracts only with responsible vendors offering the lowest net cost or best value is crucial to provide essential public services. To establish clear obligations and accountability in this regard, the following is a list of contract review responsibilities which must be adhered to in the course of reviewing proposed contract awards:

The issuing department is responsible for reviewing the contract and related documents as follows:

1. Prepare and submit all required solicitation forms:
  - Request To Initiate
  - Presolicitation Review
  - Reference Check Summary
  - Responsibility Determination (see below for key components)
  - Recommendation For Award
  - Prepare the ECRS Contract Package(s)
2. Review offer(s) for responsiveness—was the offer submitted timely, in the form required, and with all required additional information or materials?
3. Review vendor responsibility
  - Review all disclosure documents
  - Does the vendor demonstrate sufficient capacity (i.e. organizational structure, staffing, financial resources, and experience) to perform the scope of work?
  - Review all additional required documents (e.g. licenses, insurance, bonds, etc.)
  - Identify any potentially adverse information
    - For each potentially adverse event, indicate the investigating entity, the substance and nature of the investigation, any findings, any corrective actions taken, and the current status of the investigation.
  - Review NYC PassPort for adverse information
  - Perform a Google search of the vendor for the vendor name associations with the following or similar list of appropriate terms (terms may vary by department) and include a summary of adverse findings: investigation; violation; default; fraud; debar; bankrupt; lien; OSHA; PESH; stop work; etc.)

- Search other appropriate government websites (sites may vary by department) and include a summary of adverse findings (e.g. NYS Department of Labor, US Department of Labor, US SAM, NYS OMIG for client services, etc.)
4. Apply NIFS approval
  5. Review ECRS package and apply approvals

## **OMB**

1. Review fund availability and appropriateness
2. Review funding codes
3. Approve in NIFS
4. Apply NIFS approval in ECRS
5. Review the NIFA form
6. Apply the NIFA Approval on the routing slip in ECRS (which also simultaneously approves the NIFA form)

## **County Attorney**

1. Review and approve contract as to form
2. Review and approve insurance
3. Indicate whether Legislative approval is required
4. Confirm OMB NIFS approval has been applied
5. Approve in NIFS
6. Apply NIFS approval in ECRS

## **DPW**

1. Review and approve capital funds, if applicable

## **Chief Procurement Officer**

1. Review all required solicitation forms including the Request To Initiate, Pre-solicitation Review, Reference Check Summary, Responsibility Determination, and Recommendation For Award
2. Review all contract packages
3. Review responsiveness determinations
4. Review vendor disclosure documents and responsibility determinations
5. Review NYC PassPort for undisclosed adverse information
6. Review LexisNexis or equivalent for undisclosed adverse information
7. Review Google search summary
8. Review the summary of other appropriate government websites searched
9. Identify contract packages/documents approved by the prior administration
10. Identify retroactive contracts—require and review retroactivity justifications

## **Deputy County Executive for Compliance**

1. Review disclosed adverse information (e.g. investigations, criminal charges, convictions, bankruptcies, conflicts of interest, etc.)
2. Review adverse information identified through other sources
3. Review sole source and low vendor participation justifications

4. Review all proposed awards with documents approved by the prior administration

### **Vertical Deputy County Executive**

1. Review and approve proposed award to ensure that it meets the needs of the Department and the County

### **Legislative Affairs**

1. Review and print the Staff Summary to ensure that it is complete
2. Review and print the NIFA Form to ensure that it is complete
3. Review and print the Resolution to ensure that the information matches
4. Review the contract package to ensure that all documents are included and in the correct order, with correct certifications, notarizations, etc. as necessary
5. If provided, review redacted package to ensure all personal information is redacted
6. Confirm that all legislative inquiries regarding the contract have been answered
7. Per Nassau County Charter section 300-A, any contract to be filed for Legislative review must include a statement of whether or not the Office of the Inspector General has reviewed the proposed contract.
8. Upon Legislative approval, copy certified resolution and package in ECRS for continuation through the approval path

### **U. Request For Qualifications**

A Request For Qualifications (RFQ) generally is an open invitation to vendors to submit qualifications related to specified goods and/or services. An RFQ is used for one of two purposes. Either the RFQ establishes a list of qualified vendors eligible to participate in subsequent mini-solicitations for specific scopes of work and/or to compare various providers that offer specified services; or the RFQ may be used to both establish a list of qualified vendors and award one or more contracts directly. Any RFQ that may result in direct award of a contract must be conducted as an RFP or SCP per this policy. This section regards the conduct of an RFQ that will not result in a contract.

#### **Conduct of a Request For Qualifications to Establish a Qualified Vendor List**

A Request For Qualifications (RFQ) that will be used to establish a list of qualified vendors eligible to participate in subsequent mini-solicitations for specific scopes of work and/or to compare various providers offering similar services requires the following steps:

- 1) A Request For Qualifications is drafted by the department indicating, at a minimum:
  - a. Purpose of the RFQ
  - b. Response submission requirements
  - c. Evaluation criteria and process to be used by the County
  - d. How the resulting Qualified Vendor List (QVL) will be used and by what mechanism, and the term for which the QVL shall be effective
  - e. Date, time, place, any response is due; recipient of the submission; and acceptable method(s) and format of submission
  - f. County contact for any questions or comments respondents may have

An RFQ may include a standardized questionnaire or other instructions to vendors to ensure that all responses are complete and comparable. It may request information regarding a vendor's offerings, experience, staffing, equipment, service levels, affiliations, and any other information regarding the business that may be pertinent to the needs of the County. The RFQ also may request Not-To-Exceed pricing if the resulting QVL may result in subsequent mini-solicitations.

- 2) The DCCO of the Department issuing the RFQ ("Department") shall consult with the CPO to review the draft RFQ prior to its issuance. The DCCO also may consult with the County Attorney's Office in this regard if necessary.
- 3) Once the RFQ is finalized, the DCCO shall submit to the Department of Information Technology the RFQ and associated Mandatory Form to request an RFQ number and arrange for the RFQ to be posted on the County's bid board. The Department also shall advertise the RFQ in a manner compliant with the advertising requirements of an RFP stated in this policy. The requirement to publicly advertise the RFQ may be waived by the CPO with appropriate written justification.
- 4) The Office of Minority Affairs must be notified of the RFQ no later than the date of advertisement or issuance. Prior notice to OMA is preferred.
- 5) Steps taken during the period of advertisement of the RFQ and subsequently by the evaluation committee shall be conducted as required for conduct of an RFP as stated in this policy.
- 6) Upon conclusion of the evaluation committee, the DCCO shall submit to the CPO a written justification (the "RFQ Award Narrative"), stating:
  - a. The purpose of the RFQ
  - b. The members and titles of the evaluation committee
  - c. A description and timeline of the issuance, conduct, and evaluation of the RFQ
  - d. A list of all respondents and their ratings and/or rankings as applicable
  - e. Any determinations made by the evaluation committee, including but not limited to the vendor(s) selected for inclusion in the QVL, and the rationale for those determinations.
- 7) The CPO shall review the RFQ Award Narrative and indicate approval of the proposed QVL prior to its use by the Department.
- 8) Once a Department establishes a QVL, any solicitation to be issued with a scope covered by the QVL shall be issued only to the vendors on the QVL as a mini-solicitation, unless there is an insufficient list of vendors on the QVL that are qualified to provide the scope of services.
- 9) Prior to award of any mini-solicitation using a QVL, the DCCO shall submit and receive approval for the proposed award the following four documents described in this policy:
  - a. Request To Initiate
  - b. Pre-Solicitation Review
  - c. Responsibility Determination
  - d. Recommendation For Award

Alternatively, if the Department processes an RTI and a PSR for the initial RFQ, then these forms shall not be required for any resulting mini-solicitations.

## **V. Contract Redaction**

To promote transparency in County contracting, it is the policy of the Clerk of the Legislature to publish online certain contracts, known as “A,” “B,” “E,” and “U” contracts, submitted for review by the County Legislature. The New York State Public Officers Law allows the public to access County documents and written communications with certain exceptions for information of a personal or proprietary nature. Although the County must collect such private information as part of conducting its due diligence, it is important for the County to protect such excluded information from undue release to the public. This policy is to establish contract redaction procedures for departments and vendors to prevent release of excludable information.

To ensure that vendor information of a personal or proprietary nature is not released to the public in contracting processes, this policy establishes redaction procedures for all contract and due diligence documents submitted by vendors.

### **Contract Redaction Procedure**

For any contract action that will be posted online by the Clerk of the Legislature, the following procedure shall be followed:

Upon selection of a proposed awardee of a new contract, or in the case of an amendment or renewal, the contracted vendor, shall submit, along with the unredacted version, a duplicate redacted version of any bid, proposal, disclosure form, or other information that may be included in a County contract package. Such redacted paperwork will be posted on the County Legislature's website upon filing the proposed contract for Legislative approval.

The redacted paperwork shall be identical to the paperwork being submitted for consideration by the department, except that the vendor shall redact all information of a private or personal nature. If no redacted paperwork is submitted with the contract package, it will be understood that an unredacted version of the paperwork is acceptable for posting on the County website.

Redactions must be limited to information that is excepted from FOIL disclosure under Article 6 of the New York State Public Officers Law. This includes, but is not limited to, Social Security Numbers, Employer Identification Numbers, home or personal telephone numbers, home addresses, personal e-mail addresses or social network usernames, information of a personal nature where disclosure would result in economic or personal hardship, and trade secrets or similar information the disclosure of which would cause substantial injury to the competitive position of the person or company providing it. For redactions of information that would result in economic or personal hardship and/or trade secrets, the vendor shall explain the reason(s) for each redaction. Further, the County reserves the right to post unilaterally materials which reject Contractor redactions or make additional redactions. The Contractor will receive notice of any such changes.

Failure by a vendor to submit redacted paperwork or paperwork where redactions are not explained shall be deemed to have given their consent to the posting of the unredacted paperwork in its entirety. The County Legislature will then post an un-redacted version of the paperwork.

In addition, it is the policy of the County that any vendor using a Social Security Number (SSN) is encouraged to obtain and operate under a Federal Employer or Tax Identification Number (EIN or TIN) to prevent release of the SSN.

Departments are directed to share this policy with all proposed or current contract vendors. Vendors should consult with the department issuing the contract should they have any questions regarding this policy.

Departments must include this requirement in all RFPs, bid documents, and contracts.



## IV. Methods of Source Selection

### A. Selecting the Proper Method of Source Selection

Selecting the correct method of source selection is an essential element of effective public procurement. State Law and County policy requires open and fair solicitation of goods and services applying maximum practicable competition. This ensures that the County obtains the highest quality goods and services at the lowest net cost from qualified vendors with the integrity to warrant the award of public tax dollars and the capacity to perform the services required by the contract. Following are guidelines summarizing when various methods of procurement are to be used:

- **Formal Sealed Bid.** Formal Sealed Bidding (FSB) generally is considered the most open and fair method of competition. It establishes basic requirements with measurable units and costs for goods and/or services, and the contract is awarded to the responsive, responsible bidder that meets the specifications and offers the lowest cost. The bid is publicly advertised, and in general there are no negotiations of terms following the opening of the bids. Formal Sealed Bids are processed by the Office of Purchasing, and require written specifications, and specific measurable unit items and deliverables. Reverse auctions may be used to achieve the lowest net cost for goods and services procured by FSB.

For details regarding the conduct of Formal Sealed Bids, see **Appendix I.**

- **Request For Proposals.** Requests For Proposals (RFPs) are open competitions for services that, unlike FSBs, are awarded to the lowest responsive, responsible proposer that offers the best value to the County by assessing the cost, quality and efficiency of the offers. Whereas FSBs are awarded based on quantitative measures (cost alone), RFPs are awarded based on a combination of quantitative (cost) and qualitative (quality and efficiency) measures. Because the development and assessment of such qualitative measures requires significant judgment on the part of County procurement staff to ensure the County selects the proposal offering the best value, RFPs require greater justification, analysis, and scrutiny than FSBs do. RFPs are the appropriate method of source selection for services (including mixed solicitations for both goods and services in which services constitute the more significant part of the solicitation) in the following instances:
  - Solicitations for which specific unit items with fixed unit costs and/or reasonable quantity estimates cannot be determined;
  - Solicitations for which quality and/or efficiency is of primary importance compared with cost;
  - Solicitations which may require negotiation of terms and service levels;
  - Solicitations for which the preferred method of service delivery cannot be determined prior to issuance of the solicitation.

The above list is not all-inclusive, and there may be other circumstances that justify use of an RFP. Questions regarding the appropriateness of using an RFP should be directed to the DCCO and CPO.

For details regarding the conduct of RFPs, see **Appendix J.**

- **Streamlined Competitive Proposal Process.** The Streamlined Competitive Proposal Process (SCP) is a truncated version of the RFP process referenced above, but use of the SCP is limited to circumstances where the urgency of the County's need for services is such that, although it does not constitute an emergency as defined in the Policy, the matter is sufficiently time-sensitive to justify the truncation of the procurement process to be able to meet the County's needs adequately. The Policy lists several

specific circumstances that may justify the use of this method. Use of SCP is subject to prior approval of the DCCO and the CPO.

For details regarding the conduct of the Streamlined Competitive Proposal Process, see **Appendix K**.

- **DPW Competitive Processes for Construction and Construction-Related Services.**

The Department of Public Works (“DPW”) is the County department primarily responsible for procuring contracts for public works, and architectural, engineering and surveying services. DPW will procure all construction work to be done for the County. In addition, any department that wants to procure architectural, engineering and surveying services for its own programs or activities must first meet and confer with the Commissioner of Public Works or their designee. The Commissioner or their designee shall meet with the requesting department within several days of receiving the request. The Commissioner may authorize the requesting department to proceed with the procurement on its own. If the DPW Commissioner declines permission to the requesting department to proceed on its own, the department may then elect either to have DPW handle the procurement or may request the Deputy County Executive for Compliance or his designee for permission to proceed with the procurement on its own. A request should be made to the Deputy County Executive for Compliance or their designee only where the requesting department has a good faith belief that there are compelling reasons why it should be permitted to proceed with handling the procurement on its own. Many of the above provisions relating to formal sealed bidding apply to public works contracts, except that DPW rather than the Office of Purchasing administers the procurement process. Similarly, many of the procedures outlined above that apply to other personal services also apply to architectural, engineering and surveying services. However, there are also special provisions that apply only to the procurement of these services. The document requirements for DPW construction bids are the same as for Formal Sealed Bids. To ensure sufficient transparency in public works contracting, DPW also is required to prepare contract close-out assessments and an annual procurement assessment, as well as make public on an ongoing basis certain procurement documents.

For details regarding the conduct of DPW’s competitive processes for construction and architectural, engineering, and surveying services, see **Appendix L**.

- **Emergencies.** Emergency contracts are justified as determined by the County Executive to address an immediate threat to the life, health, safety, or property of the County, or to protect an essential County service or resource. Emergency contracts must be awarded by employing maximum practicable competition given the needs of the County and the capacity of the vendor community to meet those needs in a timely fashion. Emergency contracts are to be established only to the extent that they are needed to address the existing emergency condition. To the extent feasible, the County is to employ standard specifications and measures of vendor responsibility in the award of emergency contracts. For any emergency contract that is not issued under a formal federal, state, or local declaration of state of emergency, the CPO shall review and approve the specifications and competition applied to any proposed emergency contract, and notify the Inspector General prior to award of the contract and notice to the vendor to proceed with work under the contract.

For details regarding the conduct of Emergency Procurements, see **Appendix O**.

- **Sole Source.** A sole source for specified goods and/or services is the only source that can supply the goods and/or services to the County. A vendor may be a sole source due to proprietary technology, knowledge, or capacity to perform the required scope of work. In certain circumstances where more than one source theoretically can perform the scope of work, but only one source for all intents and purposes

is available to do so, the solicitation may be deemed a sole source by the DCCO. A sole source procurement requires a letter from the vendor justifying itself as a sole source (or in the latter circumstance above explaining the vendor's capacity to perform the scope of work, including any proprietary technology and/or knowledge), and also a memorandum from the DCCO to the CPO justifying the need for the sole source procurement. Because sole source procurements are inherently non-competitive and may subject the County to the demands of the vendor, sufficient due diligence and justification prior to proceeding with a sole source award is essential to protect the interests of the County. Sole source contracts sometimes establish operational imperatives or expectations that may obligate the County to continue to do business with the vendor long past expiration of the award under consideration. This can occur as a result of the need for maintenance and other services, replacement parts, technical training, operational experience, expansion of needs as a result of standardization, or expansion of the scope of services related to the original intended service levels. In addition, the County has little leverage to obtain the best possible pricing and service levels in sole source procurements. The vendor may attempt to raise prices, lower service levels, or alter product designs without prior consultation with the County. In the event the vendor fails or is no longer able to provide the goods and services required by the County, it may be very difficult and time-consuming to identify, procure, and implement an alternative product or service. For all these reasons each department must be very careful to review all alternative offerings prior to committing itself to a sole source procurement. When a department is considering a sole source procurement, the following questions should be asked and answered during the procurement process:

- Are the goods and/or services to be procured required to maintain essential County services? If the sole source goods and services are needed for ancillary, non-mission-critical services it may be preferable to reconsider the need.
- Are there alternative, competitive goods and services available on the market that could satisfy essentially the same needs as the sole source goods and services? Sometimes the specifications may limit competition needlessly, and modest revisions to the specification make it possible to issue a competitive solicitation.
- Can the need be reassessed to allow for alternative solutions that makes a competitive solicitation possible? Sometimes the actual need is more limited than the solution being offered by the sole source; or alternatively the sole source may satisfy a more limited need that is really an integral part of a larger need that can be obtained through competition.
- If a sole source is absolutely essential, what is the price history of the goods and services to be procured? How does the pricing compare historically to similar offerings in the market?
- Subsequent to the contract under consideration, will there be any anticipated need for additional goods and/or services or related offerings available only through the sole source vendor?
- What is the alternative strategy if a sole source procurement is not possible? Vendors have been known to refuse to accept terms and conditions that the County may consider essential to enter into a contract. In addition, the vendor may not reach agreement with the County in the time required by the County.

Prior to negotiating a sole source procurement, the DCCO and the CPO must approve the justification for the procurement, and a public notice of intent to award a sole source contract approved by the CPO must be published in the County's official newspaper at least ten business days prior to negotiation of the contract.

For details regarding the conduct of Sole Source Purchases, see **Appendix P**.

- **Small Purchases.** Small purchases of goods and non-personal services of up to \$10,000.00 are processed by the Office of Purchasing. Small purchases of less than \$500.00 are procured directly without competition after determining that the price is fair and reasonable. Small purchases of \$500.00 or more are solicited competitively to all vendors registered for the applicable commodity, and are awarded to the lowest responsive, responsible bidder. Reverse auctions may be used to achieve the lowest net cost for goods and services procured by small purchase.

For details regarding the conduct of Small Purchases, see **Appendix Q**.

- **Intergovernmental and Cooperative Contracts.**

Purchases through other Counties within New York State. Pursuant to General Municipal Law section 103(3), the County may make purchases of materials, equipment or supplies, or to contract for services (other than services subject to article 9 of the Labor Law) through any county within New York State, subject to the rules established under County Law section 408-a(2). Prior to making such purchase, the DCCO shall consider whether such purchases will result in cost savings after all factors, including charges for service, material, and delivery have been considered. The DCCO must also certify in writing in the procurement file that all underlying requirements of the county contract have been met and documented, including, but not limited to, any Mini-Bid Award Processes.

Purchases through OGS. Pursuant to General Municipal Law section 104(1), the County may make purchases of commodities, materials, equipment, technology, food products, supplies or services made available under State Finance Law section 163 through OGS using Backdrop Contracts. The DCCO must certify in writing in the procurement file that all underlying requirements of the Backdrop Contract have been met and documented, including, but not limited to, any Mini-Bid Award Processes.

Purchases from Federal General Service Administration Supply Schedules. Pursuant to General Municipal Law section 104(2), the County may make purchases from federal general service administration supply schedules identified in such section of the General Municipal Law in accordance with the procedures established in the supply schedules. Prior to making such purchase from a federal supply schedule, the DCCO shall consider whether such purchases will result in cost savings after all factors, including charges for service, material, and delivery have been considered. The DCCO must also certify in writing in the procurement file that all underlying requirements of the federal supply schedule have been met and documented, including, but not limited to, any Mini-Bid Award Processes.

The County may seek to purchase goods or services together with one or more government entities to achieve greater purchasing power and cost savings. To accomplish cooperative purchasing, the County may enter into an intergovernmental cooperative agreement with such other government entities and/or join a group purchasing cooperative. Prior to soliciting goods or services with another government entity, the DCCO must certify in writing in the procurement file that all requirements have been met and documented. The CPO must be advised if a group purchasing cooperative requires the County to enter into a membership or similar type of participation agreement.

### **Piggybacking on Certain Government Contracts**

Pursuant to General Municipal Law 103(16), and as further outlined in the NYS Comptroller opinion (link to opinion: <https://osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf>), which law was subsequently extended, the County is authorized to use contracts let by other governmental entities (piggyback) for the

purchase of apparatus, materials, equipment and supplies, and of services related to the installation, maintenance or repair of those items, if three prerequisites are met:

1. The contract was let by the U.S. or any agency thereof, any state or any other political subdivision or district therein.
2. The contract has been made available for use by other governmental entities.
3. The contract must have been let to the lowest responsible bidder or on the basis of best value in a manner consistent with the piggyback law.

Please note, the County has not adopted the best value award standard for purchases that are subject to the sealed bidding requirements of General Municipal Law section 103(1). Therefore, any best value awarded contract that the County is attempting to piggyback must also be independently determined by the County to have been awarded to the lowest cost responsible bidder. The procuring department should work closely with the Department of Shared Services Office of Purchasing to make this determination.

Contracts awarded per GML 103(16) generally are issued by the Department of Shared Services Office of Purchasing.

Per this Policy the County also is authorized to use intergovernmental and cooperative contracts for goods and services not covered in GML 103(16) by executing a personal services agreement and providing documentation as follows:

1. The contract was let by the U.S. or any agency thereof, any state or any other political subdivision or district therein
2. The contract has been made available for use by other governmental entities
3. Justification of the Department's need for the goods and services in the scope of work
4. Demonstration that the contract was awarded to the lowest responsible bidder or on the basis of best value consistent with this Policy
5. Determination that the contract pricing is fair and reasonable
6. Determination that piggybacking the contract is in the best interests of the County

All piggyback contracts with a value of \$1,000.00 or more, other than when using NYS OGS Backdrop Contracts or federal supply schedules in accordance with General Municipal Law section 104, require completion of a Request To Initiate, Pre-Solicitation Review, Responsibility Determination, and Recommendation For Award as described in this Policy, and must be processed through ECRS.

- **Government-to-Government Purchases.** These agreements are negotiated outside the solicitation and award process in consultation with the County Attorney in the best interests of the County.
- **Preferred Source.** As stipulated by the NYS Finance Law, the County is obligated to procure listed goods and services from Preferred Source vendors identified by NYS OGS. Prices must be determined to be fair and reasonable as defined in state law prior to awarding the contract.

For details regarding the conduct of Preferred Source Purchases, see **Appendix R**.

Any questions regarding the selection of an appropriate method of source selection for a specific solicitation should be directed to the DCCO and the CPO prior to proceeding with the solicitation.

## V. Contract Administration

### A. Evaluation and Documentation of Vendor Performance

- 1) **Criteria.** Performance evaluation shall conform to the requirements of the contract, including, but not limited to, quality and timeliness of performance, and fiscal administration and accountability. The department awarding the contract shall identify specific objectives and evaluation criteria to be included as part of the contract. Where practicable, the department shall develop both qualitative and quantitative performance indicators, including outcome criteria.
- 2) **Frequency.** The department shall monitor the vendor's performance against such standards and indicators on an ongoing basis and sufficiently far in advance of the end of the contract term to determine whether an existing contract should be extended, renewed, terminated, or allowed to lapse. A performance evaluation shall be done no less than once annually except that for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits, an evaluation report shall be prepared only in cases of deficient performance. Notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the annual evaluation. All vendor performance evaluations shall be maintained by the department and stored electronically and/or submitted as directed by the CPO.
- 3) **Report.** The evaluation and supporting documentation shall be incorporated in a report to be maintained in the contract file.
- 4) **Contract Termination.** Nothing in this section shall affect a department's right to terminate a contract for deficient performance or otherwise in accordance with the terms of the contract.
- 5) **Client Services**
  - a. **Unannounced Site Visits:** Performance evaluations shall include periodic unannounced site visits and interviews with clients and staff. The results of the unannounced site visits shall be summarized and made a part of the evaluation report.
  - b. **Assessments of Client Satisfaction:** The department shall assess client satisfaction by using techniques such as periodic interviews with clients, interviews with members of the clients' families, questionnaires to survey clients or their families, or such other techniques as may be appropriate. If interviews or surveys are used, clients shall be selected on a statistically random basis to ensure sampling of a representative cross-section of the client population.

### B. Contract Changes and Amendments

Contract changes and amendments may be necessary to accommodate unforeseen circumstances or conditions during contract administration. Changes and amendments may be made only if they are materially within the existing scope of the contract. Any change or amendment that would materially alter the scope of work must be solicited separately, and may not be incorporated into the original contract. Material changes include, but are not limited to, work to be performed outside the contract term, work to be performed outside the geographically defined area of work, and work that is not required to complete the scope of work and accomplish the stated intent of the contract.

Contract changes and amendments typically are used to include additional necessary work, extend the term of the contract, add funds needed to cover unanticipated increased expenditures, and/or clarify specifications or terms and conditions. Price and cost increases must be justified in a manner similar to the analysis described for price adjustments below, relying upon publicly-available empirical data to the

extent feasible. The DCCO must justify in writing the specific change(s) required, the reason for the change, any price or cost impact, and determine that the proposed change or amendment is fair and reasonable, necessary to accomplish the scope of work, and in the best interests of the County.

Contract extensions and funding increases may be warranted to perform ongoing work to completion of a given assigned project, or to ensure continuity of essential services until a new contract is established. Extending a contract to accommodate unforeseen urgent County needs generally is considered reasonable with concurrence of the vendor. Such circumstances also may require significant funding increases to address the unforeseen urgent needs. Contract extensions are not intended to avoid the issuance of new solicitations for recurring County needs. The DCCO must ensure that solicitations for recurring County needs are issued timely to avoid the need to extend contracts unnecessarily. When a department determines that a contract must be extended due solely to maintain continuity of services, the DCCO must initiate a new procurement for a replacement contract as soon as practicable thereafter to avoid a recurrent need to extend the original contract further. In the event that the contract extension is made on or after the termination date of the agreement, the DCCO must justify and explain in writing the reasons for extending the contract beyond the stated termination date. In addition, the DCCO is required to submit in writing a memorandum, prior to submission for legislative approval, explaining any delays experienced during the contract routing process.

**Policy.** All changes to existing contracts shall be approved by the DCCO of the department that issued the contract and shall be reflected in a change order or amendment, which, once authorized, shall become a part of the original contract. A copy of the change order or amendment shall be sent to the vendor within ten days after authorization of the change. Vendors who deviate from the requirements of the original contract without a duly authorized change order or amendment do so at their own risk. Change orders must reflect work or adjustments to the terms and conditions contemplated in the original contract either implicitly or explicitly. Change orders are processed primarily by the Department of Public Works to reflect nonmaterial changes in construction and construction-related contracts. All other nonmaterial scope contract changes and any other authorized changes are processed as change orders or amendments depending upon whether the revision is contemplated in the contract. Material scope changes are prohibited.

- 1) The DCCO may include in any solicitation a provision for determining the cost of expected changes, so that these costs can be competitively determined before award.
- 2) DPW change orders are subject to review and approval by the Change Order Committee per policies issued by the Comptroller's Office and the County Attorney.
- 3) Types of Changes Permitted (may include one or more of the following):
  - a. specification changes to account for design errors or omissions;
  - b. changes in contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts (e.g. blanket purchase order contracts), all changes that cumulatively exceed the greatest of ten percent of the original contract amount or \$50,000 shall be approved by the CPO;
  - c. changes in delivery location;
  - d. changes in shipment method; and
  - e. any other change not inconsistent with this section.

- 4) Changes Not Permissible for Material Alterations of Scope: Changes are permitted only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract. Changes are not permitted for material alterations in the scope of the work or for the insertion of a renewal clause to the contract. Material alterations to the scope of the work may be made only by a new procurement.
- 5) Small Purchases: Changes to small purchases shall not bring the total value of the procurement to an amount greater than the small purchase limits.
- 6) Subcontracts: Changes to construction subcontracts shall be made in accordance with the Subcontracting terms of this Policy.
- 7) Adjustments of Price or Time for Performance. The vendor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the vendor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.
- 8) Documentation.
  - i. Changes shall be categorized by type and numbered sequentially.
  - ii. For each procurement, the DCCO shall maintain a log of all executed change orders and amendments that shall include:
    1. the name of the vendor and the original contract amount;
    2. the reason(s) for and the dollar amount of the change order; and
    3. a running total of the value of the changes and the resulting revised contract amount.
- 9) As-built field records shall be maintained by the department or its designated construction site representative, as applicable.

### C. Subcontracts

1. **Policy.** Consistent with the terms of the contract, a vendor may enter into subcontracts where the contracting department approves. The County has an interest in ensuring that all County work is performed by appropriate persons.
2. **Form.** All subcontracts made by the vendor shall be in writing. A vendor shall not be entitled to payment for any work performed by a subcontractor prior to the vendor entering into a written subcontract with the subcontractor and complying with the provisions of this section.
3. **Approval.** All subcontractors must be approved by the department prior to commencing work under the subcontract.
4. **Approval Process:**
  - Before entering into any subcontract, the vendor shall submit a written statement to the department giving the name and address of the proposed subcontractor, the portion of the work and materials that the subcontractor is to perform and furnish, proof of any required insurance of the subcontractor, and the estimated cost of the subcontract. In



general, subcontracted work should constitute less than half of the value of the scope of work.

5. Upon receipt of the above, the department in its discretion may grant or deny preliminary approval for the vendor to contract with the subcontractor. Prior to issuing any preliminary approval, the department must review all available information regarding the responsibility of the proposed subcontractor. For any subcontractor for which adverse information is identified, preliminary approval may not be granted without prior approval of the CPO. The Department shall notify the vendor within a reasonable period whether preliminary approval has been granted. If preliminary approval is granted the vendor shall provide such documentation as may be requested by the department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, as applicable, but not limited to:
  - Completed vendor integrity and disclosure forms as required by this Policy;
  - References;
  - Licenses;
  - Insurance;
  - Documentation that the subcontractor has been certified by the County as a minority-owned, women-owned or disadvantaged business enterprise, as applicable.
6. Upon receipt of all relevant documentation, the department shall notify the vendor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the vendor may submit another proposed subcontractor unless the vendor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the department.
7. Privity. The approval by the County of a subcontractor shall not establish privity between that subcontractor and the County or relieve the vendor of any obligations under the contract

#### **D. Contract Renewals**

- 1) Renewals may be at the sole discretion of the County or upon mutual consent of the vendor and the County as indicated in the solicitation.
- 2) Contract renewals require a written notice to the vendor advising of the County's intention to renew the contract for a stated period per the terms of the contract, and vendor concurrence if required. At a minimum, funding for renewals require approvals by OMB and the Comptroller's Office. The CPO and Legislative Affairs may require prior approval of renewals as well. When a department processes a renewal as a new contract, it is treated as such and requires all approvals indicated in the policy.
- 3) For any contract renewal that requires only a departmental notice to the vendor to effectuate, a copy of the notice of the renewal must be filed in the contract file and with the Clerk of the Legislature.

#### **E. Task Orders**

Requirements contracts for "on-call" services may be solicited for a given dollar amount of services as defined by the maximum contract amount, for which a minimal amount of funds (typically \$0.01 or \$1.00) may be

encumbered, or any amount up to the maximum amount may also be encumbered at the start of the contract. During the term of the contract, when a specific assignment of work is made for which an additional encumbrance is required, a task order must be encumbered for the specified work. The cumulative value of all task orders and other encumbrances shall not exceed the maximum contract amount stated in the contract. Task orders that increase the maximum contract amount are submitted as amendments.

## **F. Price Adjustments**

Price adjustments during the term of a contract are sometimes necessary due to producer price fluctuations, supply shortages, demand spikes, and other factors that may affect the manufacture, distribution, or performance of goods and services the County purchases. When procuring multi-year contracts for goods and services that are likely to experience significant price fluctuations throughout the term of the contract, it is ideal to anticipate such price fluctuations by including language in the solicitation anticipating price changes, and, to the extent feasible, defining the process by which price adjustments will be applied. The most common method used for this purpose is to tie the bid price(s) to a federal producer price index for the related commodity(ies) or service(s), or another appropriate industry-wide index. Any language regarding price adjustments stated in the solicitation also must be stated in any resulting contract.

In the absence of price adjustment language included in the contract, price adjustments are allowed during the term of a contract only if they are:

- 1) Not precluded in the contract
- 2) Determined to become necessary because of external factors that reasonably could not have been foreseen by either the vendor or the County at the time of contract award
- 3) Deemed to be fair and reasonable
- 4) Determined in writing by the DCCO in the procurement file to be in the best interests of the County

As stated above, to the extent feasible price adjustments shall be determined using government or industry indices or other benchmarks to ensure that any price adjustments are fair and reasonable. Such indices or benchmarks shall be identified in the solicitation and the contract whenever feasible.

Price adjustments may or may not be allowed in solicitations at the discretion of the County. Any solicitation that includes price adjustments must reiterate those terms in any contract resulting from the solicitation as a material element of the contract.

Price adjustments for all contracts must be approved by the CPO prior to implementation. For all such price adjustments, the DCCO shall submit a written justification to the CPO explaining the proposed price adjustment(s), why they are needed, how they have been calculated, and providing any additional data and/or documentation justifying the increase. Such additional information may include, but is not limited to, manufacturer invoices, price data related to material inputs, evidence of significant price increases and/or resource shortages in the market, etc.

Proposed price adjustments that are not found to be in the best interests of the County must be denied by the DCCO. Vendors are reminded of their contractual obligation to perform the scope of work as specified in the contract regardless of such refusal by the County to increase contract pricing. The vendor has the right in such circumstances to provide additional data or other evidence justifying the requested increase, and the County may reconsider the requested increase at its sole discretion.

Departments are reminded that, in addition to increasing over time, prices sometimes fall as well. The DCCO must ensure that whenever warranted such price decreases also are applied timely.

In the event that the County cannot come to agreement with a vendor regarding a proposed price increase or decrease, in addition to any other remedies including, but not limited to, termination of the contract for cause, the County may find it necessary to issue a new solicitation for the goods or services. This is most likely to occur during contracts with a multi-year term in which there are extraordinary demand spikes, supply shortages, or other external factors that reasonably could not have been foreseen by either the vendor or the County at the time of contract award.

### **G. Contract Assignments**

In the conduct of administering a contract, there are occasions in which a vendor requests assignment of the contract to another vendor. County solicitations, contracts, and the General Municipal Law require approval of the County prior to any contract assignment. This policy is introduced to ensure that the County approves assignment of County contracts only to responsible vendors as defined in the Countywide Procurement & Compliance Policy.

This policy establishes the procedure to process contract assignment requests received during the conduct of contract administration.

### **Contract Assignment Procedure**

Any contract assignment request must be submitted by the current contract vendor in writing addressed to the Department Head and/or DCCO of the department managing the contract and must include the following:

- 1) the name, address, federal Employer Identification Number (EIN), and contact information of the proposed vendor the contract will be assigned to;
- 2) the reason for the requested assignment;
- 3) a demonstration that the proposed vendor is qualified, responsible, and there will be no reduction in service level to the County;
- 4) confirmation that the proposed vendor has registered with the County and completed the required disclosure forms in the County's vendor portal;
- 5) evidence of the proposed vendor's insurance, which must be consistent with the insurance requirements under the current vendor's contract with the County;
- 6) evidence of the proposed vendor's ability to obtain required bond(s) as applicable;
- 7) an Assignment, Assumption, and Consent Agreement signed by both the current and proposed vendors; and
- 8) confirmation of the effective date of the assignment.

The County reserves the right to request additional information from or meet with the current or proposed vendor to discuss the requested contract assignment and supporting documents prior to making a determination, including, but not limited to, requesting copies of any applicable licenses, debarment certifications, required bonds, and the completion of a Request for Tax Payer Identification Number and Certification form.

Based on all information presented, the DCCO shall determine whether to accept the contract assignment request. Any contract assignment accepted by the DCCO also requires approval by the following:

- Department Head
- DPW (if capital)
- County Attorney
- Chief Procurement Officer (CPO)
- Deputy County Executive for Compliance
- Comptroller's Office

The initiating department must compile and submit to the above list of approvers the following information in the contract assignment package:

- Contract Assignment Approval Form
- Copy of the original contract and any amendments
- Assignment, Assumption, and Consent Agreement
- Record-of-decision memorandum as reference in Section IV below
- Disclosure forms completed by the proposed vendor
- Insurance certificates from the proposed vendor

Additionally, an individual authorized to sign the original contract, typically a Deputy County Executive responsible for the originating department or the Commissioner of Shared Services, must also approve of the assignment and sign the Assignment, Assumption, and Consent Agreement. The County Attorney will review and approve the Assignment, Assumption, and Consent Agreement as to form and compliance with insurance requirements.

All undisputed invoices from the current vendor should be processed prior to the transfer of contract funds to the new vendor.

### **Records of Contract Assignments**

For each contract assignment request received, the DCCO shall generate and retain a record-of-decision memorandum outlining the circumstances and rationale for allowing or declining the assignment. The DCCO shall maintain a record of all such memoranda on file. In addition, a copy of each memorandum shall be submitted to the CPO for retention in a central file.

## **Appendix A: Laws and Regulations**

### Gen. Mun. Law

§99-h (“Participation in federal programs”)

§99-r (“Contracts for services” purchased from a state agency department, public benefit corporation or public authority)

§101 (“Separate specifications for certain public work”) (“Wicks Law”)

§103 (“Advertising for bids; letting of contracts; criminal conspiracies”)

§103(3) (Purchases through other counties)

§103-a (“Ground for cancellation of contract by municipal corporations and fire districts”)

§103-b (“Disqualification to contract with municipal corporations and fire districts”)

§104 (“Purchase through [State] office of general services”)

§104-b (“Procurement policies and procedures”)

§119-o (Intermunicipal Agreements)

Article 18 (“Conflicts of Interest of Municipal Officers and Employees”)

### Labor Law

§220 (“Hours, wages and supplements”)

### State Finance Law

§161 (“Preferred Sources”)

### Nassau County Charter

§103(8) (“Specific powers” of County Legislature)

§187 (“Authority, Powers and Functions” of Inspector General)

§300-A (“Paperwork Reduction Act of 1999”)

§402 (“Duties” of Comptroller)

§702 (Department of Shared Services: “Purchasing and Inventory Duties; competitive bids”)

§703, (“Stores Account”)

§704 (“Requisitions”)

§1102 (County Attorney “General powers and duties”)

§1122 (“Vendor Disclosure”)

§1122(a) (Disclosure of Campaign Contributions”)

§1209 (Contracting for engineers and technical services)

§2151 (“Powers and duties” of Department of Information Technology”)

§2202 (“Pecuniary interest of officers, employees or agents in execution of contracts”)

§2206 (“Execution of contracts”)

§2208 (“Use of patented articles by County”)

§2218 (“Code of Ethics”)

Nassau County Administrative Code

§7-1.0 (“Purchases involving less than five hundred dollars”)

§7-2.0 (“Filing of contracts of purchase”)

§7-3.0 (“Defaulters to the county”)

§22-4.2 (“Code of Ethics”)

§22-17 (“Screening of personnel of service providers”)

Miscellaneous Laws of Nassau County

Title 51 (“Apprenticeship Training Programs for County Contracts”)

Title 53 (“Participation by Minority Group Members and Women in Nassau County Contracts”)

Title 56 (“Collective Bargaining Activities of Unions in Nassau County”)

Title 82 (“Ensuring Service-Disabled Veterans Have Greater Participation in County Contracts”)

Ordinance No. 74-1979, as last amended by Ordinance No. 128-2006 (Contractor “Administrative Fee”)

Ordinance No. 72-2014 (“Vendor Registration Fee”)

Resolution 928 of 1993 (Provisions relating to small purchases and procurement of architectural, engineering and surveying services)

Executive Order No. 1 of 1993 – in relation to personal services contracts

Written justification required for not taking lowest cost proposer or not obtaining at least 3 proposals

## **Appendix B: Definitions**

**ADDENDA OR ADDENDUM** - Refers to documents issued by the County that modify the terms of a Solicitation. Also referred to as a solicitation Amendment.

**ADPICS** – The County’s Advance Purchasing Inventory Control System used by departments to place purchase orders with the Office of Purchasing.

**ADVISEMENT/STAFF SUMMARY** – The advisement/staff summary form summarizes the purpose, terms and conditions, and price of a proposed contract, the amount requested for encumbrance, and the procurement history, including which County officials and agencies have approved it.

**AMENDMENT** – A contract amendment modifies either the work to be performed or terms and conditions of the contract. Contract amendments may not be used for material scope changes. Amendments must be agreed to by all parties to the contract.

**APPROPRIATION** – Sum of money from public funds legally provided by the governing body for a specific purpose.

**BACKDROP CONTRACT** – A contract used by State OGS through which political subdivisions, including the County, may purchase certain goods or services from a pool of qualified vendors who are eligible to participate in a secondary Mini-Bid Award Process or other specified selection process.

**BEST AND FINAL OFFER (BAFO)** – In procurement of certain services, where the County decides after receiving competing proposals to hold discussions with one or more finalists, it may solicit revised proposals from the finalists- known as “best and final offers.”

**BEST VALUE** – The proposal having the “best value” in a Procurement for services is the one that optimizes quality, cost and efficiency among responsive and responsible proposers. To the extent that it is practicable, a determination that a proposal has the best value should have an objective basis.

**BID** – An offer, which upon acceptance by the County, within the allotted time, becomes a binding contract.

**BID BOND** – A form of bid security in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if the bid is accepted, fails to accept the contract as bid. See also “Bid Deposit,” “Bid Security,” and “Forfeiture of Deposit or Bond.”

**BID DEPOSIT** – A sum of money or check deposited with the County to guarantee the bidder will, if selected, accept the contract or forfeit the deposit. See “Bid Bond” and “Bid Security”.

**BID NUMBER** – The number assigned by the Office of Purchasing to a request to purchase goods or services after the Office of Purchasing receives a requisition from a department.

**BID SECURITY** – A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid. Otherwise, the bidder (in the case of a deposit) or his/her guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. In general, the purpose of bid security is to assure that if the lowest bidder refuses to accept or perform the contract, the County will be paid the difference between the lowest bid and the next lowest bid. This discourages bidders from making bids that are not serious. See also “Bid Bond,” “Bid Deposit,” and “Forfeiture of Deposit or Bond.”

**BIDDERS LIST** – A list maintained by the Office of Purchasing setting the names and addresses of suppliers of

various goods and services from whom bids, proposals and quotations can be solicited. The vendors on the list have previously expressed interest in doing business with the County, but are not prequalified.

**BLANKET PURCHASE ORDER CONTRACT**– A contract let by the Office of Purchasing under which a vendor agrees to provide goods or services on a purchase-on-demand basis to one or more County departments. The contract generally establishes prices, terms, conditions and the period covered. Shipments are to be made as required by the terms set forth in the contract and by the purchaser.

**CATALOG CONTRACT** – A Catalog Contract is a Blanket Purchase Order Contract with a fixed discount from the vendor’s list price. The list price may be changed (upon issuance of a new catalog or otherwise per the terms of the contract) but the discount cannot be decreased.

**CPO** – The County’s Chief Procurement Officer is appointed by the County Executive as the official responsible for establishing and enforcing procurement policies and procedures to be followed by all County departments.

**CHANGE ORDER** – A change order is an order directing the contractor to make changes that the contract between the County and the contractor authorizes the County to order without consent of the contractor. The work or terms and conditions altered by the change order must be nonmaterial scope changes or other changes reasonably contemplated by the contract in order to complete the scope of work. Change orders are not subject to competitive bidding requirements because they are not viewed as new procurements, unless the change order “so varies from the original plan or is of such importance as to constitute a new undertaking.” DPW change orders are subject to review and approval of the Change Order Committee, comprised of representatives of the Comptroller, County Attorney, and DPW.

**CLIENT SERVICES** – Services that are provided directly to members of the public.

**COMPETITIVE PROCESS** – A process where two or more firms can compete for a contract.

**COMPTROLLER** – The Nassau County Comptroller.

**COMPTROLLER APPROVAL FORM** - The form that the Comptroller’s Office requests when a contract is presented to the Comptroller for approval.

**CONFIDENTIAL INFORMATION** – Any information that is available to a County employee only because of the employee’s status as a public employee and is not a matter of public knowledge or available upon request pursuant to the New York Freedom of Information Law.

**CONFLICT OF INTEREST** – A clash between the personal interest of a contractor, public official or employee and the perceived or actual interests of the County. Prohibited conflicts of interest are defined by section 2202 and 2218(1) of the Nassau County Charter and Article 18 of the General Municipal Law.

**CONSIDERATION** – Something of value given or done as recompense that is exchanged by two parties and which makes a contract binding.

**CONSTRUCTION PROJECT** – The building, altering or repairing, of a public structure or building, or other improvements to any public real property. Construction projects are funded out of the County’s Capital Budget funds and meet the criteria for capital eligibility under section 10.00 of the New York Local Finance Law. Routine operation, routine repair and routine maintenance of existing structures, as well as furnish and install agreements are not considered “Construction Projects”.



**CONTRACT** - Any written instrument or electronic document containing the elements of offer, acceptance, and consideration.

**CONTRACTING OFFICER** – The Department Chief Contracting Officer or his/her delegee.

**CONTRACTOR** – Any individual or entity seeking to or doing business with the County within the scope of this Policy.

**COST ANALYSIS** – The process of examining the reasonableness of a vendor’s price by evaluation of the separate cost elements and proposed profit in part on the basis of cost data supplied and certified by the vendor. Cost analysis is used on contract actions (including change orders) where price cannot be determined as fair and reasonable by using price analysis alone.

**COST ESTIMATE** – The amount that the County projects that it will cost a contractor to deliver a good or service.

**COUNTY** – Nassau County.

**COUNTY ATTORNEY** – The County Attorney of Nassau County.

**COUNTY EXECUTIVE** – The County Executive of Nassau County.

**DCCO** - The Department Chief Contracting Officer is designated by the Department Head as the official responsible for working with the CPO to establish and enforce procurement policies and procedures to be followed by all individuals performing procurement functions within the Department.

**DCE** – A Deputy County Executive of Nassau County.

**DESIGN SPECIFICATION** – A description of what the County seeks to purchase in terms of how physically the good is to be designed and manufactured or how the service is to be delivered. See also “Functional Specification” and “Performance Specification”.

**DIRECT PURCHASE ORDER** – An order placed by a department through the County’s ADPICS system to request goods that previously have been procured under a Blanket Purchase Contract.

**DISCLOSURE STATEMENT**– A statement that discloses the names, business addresses and telephone numbers or other required information of the principals of a firm and/or the firm itself which must be submitted by bidders and proposers for any contract, except that publicly traded corporations may submit instead a copy of their Securities and Exchange Commission disclosure for certain disclosures. In this Policy disclosure statements are referred to collectively as “vendor and integrity documents.”

**DPW** – The Nassau County Department of Public Works.

**EMERGENCY PROCUREMENT** – A purchase made without following normal competitive procedures in order to obtain goods or services to meet an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**ENCUMBRANCE** – A reservation or commitment of budgeted funds related to unfulfilled contracts for goods or services. The purpose of encumbrance accounting is to prevent further expenditure of funds in excess of appropriated budgets.

**FIDELITY BOND** – A bond that secures the County up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of a Contractor or a Contractor’s employees

**FORMAL SEALED BID** – A bid submitted to the County in a sealed envelope in conformance with the requirements set forth in an Invitation to Bid.

**FUNCTIONAL SPECIFICATION** - A description of what the County seeks to purchase in terms of what results are required. A detailed functional specification that specifies what level of performance is desired for various characteristics can also be called a “Performance Specification”.

**GOODS** – All types of personal property, including supplies, materials, equipment and machinery, but not including investment securities and currency.

**INSPECTOR GENERAL** – The independent Nassau County Office of the Inspector General.

**INVITATION TO BID** – A document containing Specifications for Goods and Services which the County is seeking which invites any vendors that may be able to supply the Goods or Services to submit a Formal Sealed Bid.

**IT** – The Department of Information Technology.

**LEGISLATURE** – The Nassau County Legislature.

**LIFE CYCLE COSTING** – Life Cycle Costing is the process by which all costs for acquisition, operation, maintenance, and disposal of a good or service are analyzed and totaled.

**LOWEST RESPONSIVE, RESPONSIBLE BIDDER** – The lowest responsive, responsible bidder is the one that submits the bid that is lower in its aggregate cost to the County than any other bid submitted by a responsive, responsible bidder.

**MINI-BID AWARD PROCESS** – An abbreviated bid and selection process sometimes required by NYS OGS or other intergovernmental contracts when purchasing goods or services through OGS from its list of prequalified vendors on a Backdrop Contract.

**MODEL BASE CONTRACT FOR PERSONAL SERVICES** – The Model Base Form, which has been approved by the County Attorney’s Office, is the template to be used to memorialize personal service agreements.

**MULTIPLE AWARD** – The award of a contract to two or more bidders for the same or essentially similar items. This is appropriate only in situations where the award of a single contract would be impossible or impractical and awards are limited to the least number of suppliers necessary for a workable contract.

**OFFICE OF PURCHASING** – The Nassau County Department of Shared Services’ Purchasing Office.

**OGS** – The New York State Office of General Services.

**OMB** - The Office of Management and Budget of Nassau County.

**PERFORMANCE BOND** – A performance bond is a contract of guaranty executed subsequent to award by a successful bidder or proposer to protect the County from loss due to contractor inability or failure to complete the contract as agreed.

**PERFORMANCE SPECIFICATION** – A specification describing the performance characteristics that the County seeks in a good or service.

**PERSONAL SERVICES** – Services provided by independent contractors that require the consistent exercise of judgment or specialized skills. Examples of Personal Services include medicine and the medical arts, architecture, engineering, surveying, accounting, law, financial advisory and underwriting services, management consulting services, feasibility studies of a scientific or technical nature, and other services that require advanced education or professional licensing or certification. Personal services do not include standard services such as performance of a trade, routine maintenance and repair, performing arts, administrative services, or other services that do not require advanced education or professional licensing or certification. Personal services also do not include construction services.

**PRE-BID CONFERENCE** – A meeting convened by the County regarding a specific advertised, open solicitation inviting vendors to discuss certain elements of the specifications and solicitation.

**PREFERRED SOURCE** – An entity listed by the Commissioner of OGS as a vendor of one of the goods or services on its list of services and commodities provided by Preferred Sources. Pursuant to section 162 of the State Finance Law, when a good or service that is sought by the County is required to be provided by a Preferred Source, the County must purchase it from the Preferred Source if the Preferred Source can meet the County's requirements.

**PRE-SOLICITATION CONFERENCE** – A meeting convened by the County regarding a specific solicitation that has not been advertised inviting vendors to discuss certain elements of the specifications and solicitation.

**PRICE ANALYSIS** – The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Examples of price analysis techniques that may be appropriate to use to determine whether a proposed price is fair and reasonable include, but are not limited to, comparing proposed prices received in response to a solicitation; comparing current proposed prices to prior proposed prices and contract prices; applying rough yardsticks, i.e., rough order of magnitude (e.g., dollars/lb., price/horsepower), to a proposed price to highlight inconsistencies that would warrant further review; comparing proposed prices with competitive price lists, published market prices of commodities, similar indexes, discounts or rebate arrangements, and comparing proposed prices with cost estimates prepared by County personnel charged with cost estimating.

**PROCUREMENT** – The procedures for obtaining goods or services (but not real property), including all activities related to needs assessment, solicitation development and issuance, contract award, contract administration, contract modification, vendor performance management, and contract close-out.

**PROFESSIONAL SERVICES** – Another term for personal services (see above).

**PROGRAM STAFF** – Staff of the end-user program who require a contract for goods or services and who will be administering the contract.

**PROPOSER** - A person submitting a proposal in response to an RFP or other solicitation for proposals

**QUALIFIED LIST** – A list of vendors that has been competitively selected through a Request For Qualifications or other competitive process to be eligible to participate in mini-solicitations for the scope of services stated in the solicitation conducted to establish the list.

**QUOTATION** – A statement of price, terms of sale and description of goods or services offered by a vendor to

the County that is supplied in response to a Request For Quotations.

**REQUEST FOR INFORMATION (“RFI”)** – A Request For Information is a document that is issued by the County to solicit information regarding goods and services that the County may choose to procure in the future.

**REQUEST FOR EXPRESSIONS OF INTEREST (“RFEI”)** – A Request For Expressions of Interest is a document that is issued by the County to solicit information regarding potential approaches to programs, use of facilities, or other County initiatives, and also to gauge vendor interest in providing such goods and services.

**REQUEST FOR PROPOSALS (“RFP”)** – A Request For Proposals is a document that can be issued by the County to solicit proposals for the performance of Personal Services. Unlike the Formal Sealed Bidding process, the RFP process allows for negotiation of prices and proposals after proposals have been submitted.

**REQUEST FOR QUALIFICATIONS (“RFQ”)** – A Request For Qualifications is a document that can be issued by the County to solicit qualifications for the performance of Personal Services. The RFQ may be processed in a manner similar to an RFP, or it may be used to establish a Qualified List of vendors eligible to participate in mini-solicitations in the future for the scope of services stated in the RFQ.

**REQUEST TO INITIATE (“RTI”)** – The Request to Initiate is the document used by a department to initiate a personal services procurement and which also is used by DPW to initiate a construction procurement.

**REQUIREMENTS CONTRACT** – A contract that provides for filling all purchase requirements of the purchasing County department for specified goods or services during a specified contract period, with deliveries to be scheduled by placing orders with the vendor. DPW uses this type of contract to secure contractors to perform its smaller repair and maintenance jobs that occur during the course of a year.

**REQUISITION** – A request for the acquisition of goods or services that a department submits to the Office of Purchasing through the ADPICS system.

**RESPONSIBLE BIDDER** – A bidder that has the capability to perform in full the contract requirements as evidenced by its financial, organizational and material resources, technical qualifications, experience, satisfactory record of past performance for the County and other entities, and its satisfactory record of business integrity.

**RESPONSIVE BIDDER** – A bidder whose bid meets the minimum specifications and requirements set forth in an Invitation to Bid.

**RULES COMMITTEE** – The Rules Committee of the Nassau County Legislature.

**SELECTION COMMITTEE** – A committee selected to evaluate competing proposals in the RFP process. The committee may appoint both technical and price advisors to assist it.

**SERVICES** – The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

**SMALL PURCHASE** – Any purchase of goods or services that costs no more than \$10,000.

**SOLICITATION** – The process of notifying prospective bidders or proposers that the County is seeking bids or proposals for furnishing goods or services. The process may consist of public advertising, mailing, Invitations for Bids, Requests for Proposals, posting notices on web sites, or telephone calls, faxes or emails to prospective bidders or proposers.

**SOLE SOURCE PROCUREMENT** – An award to a vendor of a contract for goods or services without any competitive process based upon the reasonable belief that the vendor is being the only supplier capable of delivering the good or service. Sole source procurement may be justified when the goods or services are subject to a patent or copyright, or in circumstances where it has been otherwise determined that only one source is available to satisfy the needs of the County.

**SPECIFICATION** - A description of what the County seeks to purchase, and consequently, what a bidder must be responsive to in order to be considered for an award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of a good or service. It may include a description of any requirements for inspecting, testing or preparing a supply or service item for delivery.

**STREAMLINED COMPETITIVE PROPOSAL** - A less formal, more flexible method of soliciting proposals for services than the RFP process.

**VALUE ANALYSIS** – Value Analysis is the process of analyzing the results of cost analysis, price analysis, and/or life cycle costing in conjunction with assessment of qualitative factors to determine the best value for the County.

**VENDOR** – Any individual or entity seeking to or doing business with the County within the scope of this Policy.

## **Appendix C: Required Contents of the Pre-Solicitation Report (PSR)**

The pre-solicitation review shall be incorporated as part of the solicitation record that shall be approved by the DCCO and the CPO and must include the following information:

- a. A description of the goods, services, or construction to be procured;
- b. A statement of need for the procurement considering the department's programmatic responsibilities;
- c. A statement of the date or time period required for delivery or completion, and an estimate of the length of time the proposed contract will remain in effect, including any renewals or extensions being considered;
- d. A statement of the basis for the decision to contract out for services (if applicable);
- e. A statement addressing the anticipated level of competition, based on department staff knowledge of the market, and any surveys performed, as appropriate;
- f. An estimate of the cost of the proposed contract, and a certification that sufficient funds are available or anticipated to be available when the contract is executed;
- g. A statement of the method of source selection planned, together with all determinations and findings required pursuant to the rules governing that method of source selection; and
- h. If life cycle costing, value analysis, or other technique is used, the result of such analysis.

## **Appendix D: Standards of Responsiveness**

**Standards.** Factors affecting the responsiveness of bids or proposals include:

- a. Compliance with all material requirements of the specification;
- b. Compliance with all material terms and conditions of the solicitation;
- c. Submission of bids or proposals in the form specified in the solicitation including all required signatures, in ink, and including all required pricing information;
- d. If bid or proposal price has been materially altered, alterations must be initialed in ink by the bidder or proposer. If the alteration has not been initialed in ink, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;
- e. Submission of bids or proposals by the time and date and at the place specified in the solicitation except that a late proposal may be accepted pursuant to this Policy;
- f. Submission of bid, performance, or payment security, if required by the solicitation. Acceptable security for bids, performance, and payment shall be limited to:
  - i. a one-time bond in a form satisfactory to the County,
  - ii. a bank certified check or money order, or
  - iii. other financial instruments as determined by the Department of Public Works in consultation with the County Attorney and the Comptroller;
- g. Submission of samples, literature, or other information, if required by the solicitation;
- h. Submission of all required disclosure statements, in a complete and accurate manner; and
- i. Attendance at a mandatory pre-bid or pre-proposal conference or site inspection.

**Rejection of Bids or Proposals.** Bids or proposals that fail to conform with the standards set forth above shall be rejected unless the DCCO determines in writing in the procurement file that waiving the nonconformance would not deprive the department of the assurance that the contract will be performed according to its specified requirements and would not adversely affect the competition by placing a bidder in a position of advantage over other bidders or by otherwise undermining the competition. Any waiver shall be approved in advance of issuance by the CPO, and the waiver shall become a permanent part of the procurement file.

**Appeal.** All non-responsive determinations may be appealed to the Department Head, unless the Department Head is acting as the DCCO in which case the determination must be appealed to the CPO, as set forth herein.

- a. Time Limit. A vendor shall have five days from receipt of the determination of non-responsiveness to file an appeal with the Department Head. Receipt of notice by the vendor shall be deemed to

be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the DCCO. Electronic submissions are acceptable. The vendors shall also send a copy of its appeal to the CPO.

b. Form and Content. The appeal shall be in writing and shall briefly state all the facts or other basis upon which the vendor contests the finding of non-responsiveness. Supporting documentation, if any, shall be included.

c. Stay of Award of Contract Pending Department Head Determination. Award of the contract shall be stayed pending the determination of the Department Head, unless the DCCO with the approval of the CPO makes a determination that proceeding with the award without delay is necessary to protect substantial County interests. Where such a determination is made, the vendor shall be advised of this action in the determination of non-responsiveness or, if the stay is removed at any time after the vendor has been notified of determination of non-responsiveness, notification shall be provided to the vendor no later than two business days after such determination is made. The Department Head shall consider the appeal, and may, in their sole discretion, meet with the vendor to discuss the merits of the appeal. The Department Head shall make a prompt determination with respect to the merits of the appeal, a copy of which shall be sent to the vendor and the CPO. The Department Head's determination shall be final. The Department Head shall not delegate the authority to make a determination on the appeal to the DCCO.



## **Appendix E: Business Characteristics Affecting Vendor Responsibility**

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. Only the apparent low, responsive bidder(s) or most advantageous proposer(s) shall be evaluated for responsibility. Factors to consider in determining the responsibility of a vendor include but are not limited to:

- Financial resources
- Technical qualifications
- Experience
- Organization, material, equipment, facilities, and personnel resources and expertise necessary to carry out the work and to comply with required schedules, taking into consideration other business commitments
- A satisfactory record of performance
- A satisfactory record of business integrity
- Where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property, funds, or other assets, accurately delineate costs, and attribute them to their causes
- Compliance with requirements for the utilization of small, minority-owned, and women-owned businesses as subcontractors
- Compliance with requirements related to grants or other funding sources
- Ability to meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- evidence that such contractor possesses such necessary items;
- acceptable plans to subcontract for such necessary items; and
- a documented commitment from or explicit arrangement with a satisfactory source to provide the necessary items.

A prospective contractor that has performed unsatisfactorily on related work shall be presumed to be non-responsible, unless the Contracting Officer determines that the circumstances were beyond the contractor's control or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably without evidence of subsequent appropriate corrective action is strong evidence of non-responsibility.

### **Vendor Integrity and Disclosure Documents**

- For purposes of vendor integrity and disclosure issues only, the following definitions apply:
  - Affiliate. An entity in which the parent of the contractor owns more than thirty percent of the voting stock, or an entity in which a group of principal owners which owns more than thirty percent of the contractor also owns more than fifty percent of the voting stock.
  - Contract. Any agreement between a Department and a contractor, or any agreement between such a contractor and a subcontractor which is for the provision of goods or services and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor

during the immediately preceding twelve-month period is valued above the small purchase threshold for goods and non-personal services, or above \$1,000 for personal services.

- Contractor. All individuals, sole proprietorships, partnerships, joint ventures, or corporations who enter into a contract, as defined herein, with a Department.
- Officer. Any individual who serves as chief executive officer, chief financial officer, secretary or chief operating officer of the contractor, by whatever titles known.
- Parent. An individual, partnership, joint venture, or corporation which owns more than fifty percent of the voting stock of a contractor.
- Principal Owner. An individual, partnership, joint venture, or corporation which holds a ten percent or greater ownership interest, or in the case of a Not-For-Profit entity holds a ten percent or greater control, in a contractor or subcontractor.
- Subcontract. Any contract, as defined herein, between a subcontractor and a contractor.
- Subcontractor. An individual, sole proprietorship, partnership, joint venture, or corporation which is engaged by a contractor pursuant to a contract, as defined herein.
- Vendor Integrity and Disclosure Forms. Forms included in this category are:
  - Political Campaign Contribution Disclosure Form
  - Lobbyist Registration and Disclosure Form
  - Business History Form
  - Principal Questionnaire
  - Consultant's, Contractor's, and Vendor's Disclosure Form
  - Personal Services Agreement Appendix L: Certificate of Compliance
  - Certificate of No Change
- Vendor Integrity and Disclosure Forms should be submitted by the Vendor and its Principals in the Nassau County Vendor Portal.
- The failure to submit all required Vendor Integrity and Disclosure Forms in a timely, complete and accurate manner will be grounds for a determination of non-responsiveness. Disclosure Forms are considered timely when submitted within 30 days unless directed by the County to be submitted earlier.
- For the purposes of determining who must submit a Principal Questionnaire, a Principal of the contractor is defined as:
  - Of a Sole Proprietor, the proprietor;
  - Of a Partnership, all managing or senior partners; or all partners if no managing or senior partners exist;
  - Of a publicly-owned Corporation, the Vice President or higher-titled executive most closely associated with the County contract;
  - Of a non-publicly-owned Corporation, every executive and/or board officer, and every individual or entity holding ten percent (10%) or more of the outstanding shares or other ownership interest of the corporation;
  - Of a Limited Liability Company/Corporation (LLC), all the members and/or managers (if authority is delegated);
  - Of another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent (10%) or more;
  - Of any business entities, all other persons participating directly or indirectly in the control of the business entity;
  - Of a not-for-profit entity, every executive officer and board officer of the entity;

- **Obligation to File Integrity and Disclosure Documents.** Vendor integrity and disclosure forms shall be completed and filed by the contractor prior to every contract award unless the CPO establishes a policy requiring less frequent submission. Disclosure forms generally are considered current for six months. Vendors have a responsibility to bring any material changes in their disclosures to the attention of the DCCO and CPO as soon as they occur. Such questionnaires shall be completed and filed:
  - By respondents to a Request For Qualifications, at the time of an application for inclusion on a prequalified list when the list is intended to result in any contract award without subsequent vendor vetting.
  - By respondents to any mini-solicitation referencing an existing prequalified list resulting from a Request For Qualifications.
  - By contractors, when requested by a Department or by the CPO, but in any event before the Recommendation for Award is approved or not later than thirty days after contract action required by the Legislature where permitted pursuant to the late filing of information allowance in this section below.
  - By subcontractors for work in excess of the small purchase threshold, within thirty days after the DCCO has received from the prime contractor written notification of the identity of the proposed subcontractor and granted preliminary approval. Subcontractors shall submit all required forms in advance of performing any work under the contract unless authorized to commence work by the CPO. With CPO approval, the Department may waive subcontractor filing requirements with sufficient justification.
  - For inter-municipal agreements and other governmental agreements, only the Consultant's, Contractor's, and Vendor's Disclosure Form is required. Governmental entities of which Nassau County is a political subdivision are not required to submit this form.
- **Late Filing of Information: When Permitted.** Vendor Integrity and Disclosure documents may be submitted within thirty days after approval of the contract action required by the Legislature as provided in the following circumstances
  - Emergency procurements as defined by this Policy; and
  - On a contract-by-contract basis where the CPO, upon the written request of the DCCO, copied to the Inspector General, has determined that expedited procurement action is required due to urgent circumstances.
- **Late Filing of Information: Required Filings.** In the circumstances set forth above, the Vendor Integrity and Disclosure documents may be submitted after registration of the contract, provided that:
  - The DCCO has notified the contractor in writing of its obligation to submit the documents as set forth above;
  - The DCCO has determined that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility prior to receipt of the integrity and disclosure documents; and
  - In addition, where the basis for the delayed submittal is an expedited procurement action due to urgent circumstances, the DCCO must provide a separate additional determination, copied to the Inspector General, setting forth the specific documented reasons it is not feasible for the contractor to complete all or some specific portion of the integrity and disclosure documents as set forth above. The DCCO's determination shall include the name, title, email address, and telephone number of the authorized representative of the contractor who provided information on which the DCCO relied in making the non-feasibility determination.
- **Exemption:** It is the policy of the County that all vendors awarded a contract subject to the disclosure requirements stated in this section shall do so. However, in rare cases when a specific contract is awarded where a contractor refuses to supply some portion of the required information, but the need for the goods or services is such that it is in the best interests of the County that the contract be awarded, the CPO may

exempt the contractor from the requirement for some specifically identified portion of information upon the written application of the DCCO, copied to the Inspector General, setting forth with particularity, :

- The efforts to obtain the required information;
- The name, title, email address, and telephone number of the authorized representative of the contractor who refused, on behalf of the contractor, to supply the required information;
- The information to be covered by the exemption;
- The reasons why an exemption should be granted in this case; and
- The basis for finding that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the exempted information.

The CPO and DCCOs shall ensure that exemptions to the disclosure requirements are kept to an absolute minimum.

### **Vendor Ownership, Affiliate, and Subsidiary Check**

Vendor responsibility review requires the contracting officer to verify prior to award that a vendor has identified its ownership and all affiliates and subsidiaries as required to be divulged on the Business History Form (BHF) and Consultant's, Contractor's and Vendor's Disclosure form (CCV). Vendors often neglect to review this information thoroughly prior to certifying the disclosure forms. Therefore, to ensure that the County vets a vendor thoroughly, it is incumbent upon the individual reviewing a vendor's responsibility to confirm that this information is correct and complete, and to review all vendor responses in this regard. This policy is introduced to ensure that the County obtains and considers all required information regarding ownership, affiliates and subsidiaries of proposed contract awardees as required in the Countywide Procurement & Compliance Policy.

This policy establishes the procedure to verify and review ownership, affiliate and subsidiary information provided by vendors in disclosure submissions.

### **Vendor Ownership, Affiliate and Subsidiary Check Procedure**

When reviewing the responses to BHF questions 8 and 9, and CCV question 6, the Department Chief Contracting Officer (DCCO) or delegate of the department reviewing a vendor's responsibility shall at a minimum perform the following steps to ensure the completeness and accuracy of the information provided:

1. Review the vendor's responses for completeness; if the vendor is a public corporation, ensure that the most recent SEC 10-K filing is attached
2. Review the vendor's website for any information regarding its ownership, affiliates, and/or subsidiaries; note any findings
3. Review the vendor's affiliate information in PASSPort if available and note any findings
4. Discuss the responses with the vendor emphasizing the importance of this information being complete and accurate; request clarification, organizational chart(s) showing all related entities (above, related by common ownership or control, or controlled by the vendor); or additional information as needed

All findings must be included in revised vendor disclosure forms or as attachments. Once all questions regarding a vendor's ownership structure, affiliates, and/or subsidiaries are addressed sufficiently, the

contract approval process may proceed in this regard. If following these steps there is still any question regarding the vendor's ownership structure, affiliates, and/or subsidiaries, contact the Chief Procurement Officer for further review.

**Maintenance of Vendor Integrity and Disclosure Documents.** It is the vendor's responsibility to maintain and update as necessary all vendor integrity and disclosure documents at all times during which the vendor is seeking to do business with the County or is performing services per a contract awarded by the County. Once these forms are submitted, it is the vendor's responsibility to notify the County in writing immediately when there is a material change to the vendor's integrity or disclosures. For new contract awards, amendments, and renewals, vendor integrity and disclosure documents expire six months after execution. If the County enters into a new, amended or renewed contract within six months from when the vendor last filed Disclosure Documents and if there have been no changes in the facts set forth in those Documents, then the Vendor may file a "Certification of No Change" in place of filing new Disclosure Documents.

**Reporting Requirement for Late Filings and Exemptions.** A copy of the written request of the DCCO and the determination of the CPO permitting late filing of required information pursuant to the above subdivisions of this section, or granting an exemption pursuant to above subdivision of this section shall be filed by the CPO with the Comptroller and the Inspector General within five days after it is approved by the CPO.

Whenever the CPO has permitted the filing of some or all of the required information within thirty days after initiation of the contract, all such information filed with the department shall be provided to the CPO, the Comptroller and the Inspector General, and also shall be filed with the Clerk of the Legislature.

**Contract Terms and Conditions.**

- Late Filing. Whenever the CPO has permitted the filing of some or all of the required information within thirty days after the registration of the contract, the contract shall contain a clause requiring the submission of the required information within the required time period as a material term and condition of the contract and permitting termination without penalty to the County for violation of the condition, or in the event that:
  - The County Executive or his/her designee determines on the basis of the belatedly filed information that it is in the best interest of the County to terminate the contract, and/or
  - The County Executive or his/her designee determines that the belatedly filed information reveals matters which if provided earlier would have provided a basis for an objection to registration of the contract and therefore it is in the best interest of the County to terminate the contract.
- Subcontractors. Where appropriate, County contracts shall contain a clause requiring prime contractors to notify subcontractors of their obligation to complete and file integrity and disclosure documents within thirty days after the DCCO has granted preliminary approval of the identified subcontractor, if the aggregate value of County contracts, franchises, and concessions awarded to a subcontractor during the immediately preceding twelve-month period the small purchase threshold. Vendor integrity and disclosure forms are required for subcontracts for goods or nonpersonal services of value in excess of the small purchase threshold, for expense-funded subcontracts for personal services in excess of the small purchase threshold, for capital-funded subcontracts for personal or construction services in excess of \$30,000, or as otherwise directed by the DCCO with the written justification by the DCCO, copied to the Inspector General, and concurrence of the CPO.

**Consequences of Failure to Submit Information as Required:** Whenever a late filing of required information has been permitted in accordance with an above subdivision of this section and the contractor has failed to submit the required information within the required time period, that fact shall be communicated to the CPO immediately and to the Inspector General. Until such time as the required information has been filed with the CPO:

- No further contract shall be awarded to that contractor;

- The contractor shall be ineligible to bid or propose or otherwise be awarded a further contract;
- The department overseeing the prime contract shall direct the prime vendor to issue a stop work order on the contract; and
- No payments shall be made to the contractor for performance pursuant to that contract unless authorized and justified in writing by the CPO, copied to the Inspector General.

Adverse Information. Per New York State law Nassau County may award contracts to and conduct business only with vendors that are found to be responsible. Responsibility in this context is defined as having the capacity to perform the services required of a contract and the integrity to warrant the award of public tax dollars. Vendor integrity is determined through a standard process of obtaining and reviewing vendor disclosures and other relevant submitted information, various databases, and current and past vendor performance. Responsibility reviews are conducted only when an award to the vendor is under consideration or when during the course of a contract held by the vendor a material change in the vendor's capacity and/or integrity occurs. The intent of a responsibility review is to determine if there exists any material adverse information impacting the vendor's capacity or integrity.

Adverse information with respect to capacity may include Unsatisfactory, Marginal, or equivalent subpar performance ratings, circumstances impairing the vendor's ability to properly perform its obligations under the contract, or any change in circumstances that reduces or may reduce the vendor's quantity and/or quality of resources available to perform the required services. These may include, but are not limited to, financial hardship, supply-chain disruptions, commodity shortages, staffing changes, changes in corporate ownership, availability of essential contracts, etc. Adverse information with respect to integrity may include investigations, indictments, convictions, affiliations with entities or principals with potentially adverse information, tax filing issues, evidence of possible criminal activity, etc., or other potentially adverse information (even if outside the scope of the required disclosures) that may impact the vendor's integrity, or the failure of the vendor to disclose adverse information, or to promptly report any material change to the vendor's disclosures.

## **Materiality**

For adverse information to be considered a factor in a vendor responsibility review, the information must be found to be material. Not all adverse information may be material. Materiality is greater for more recent events than for less recent ones, and materiality is greater for events concerning services more closely related to those required by the County than services that are less so. An event is considered most material when it concerns services equivalent or similar to those required by the County, has occurred recently, occurred in close geographic proximity to the County, and involves one or more individuals or organizational departments that may be involved in the conduct of the County contract. Also relevant in this assessment is whether the event involves a relatively large or small amount of money, services or product; whether the event involves a threat to life, health, safety, or property, whether criminality or possible criminality is involved; and the quantity of adverse information. In addition, any adverse information discovered by a department, which should have been, but was not disclosed by the vendor on the appropriate disclosure form(s) may be considered material.

Examples of adverse information that may not be considered material include adverse social media posts or poor reviews of a company posted on the internet. In addition, adverse information that occurred and/or was resolved more than five years ago generally is not considered material, although once such information has been identified the department conducting the review should investigate whether any similar subsequent event(s) occurred that may be subject to further analysis or suggesting a concern regarding the vendor's corporate culture. In addition, materiality is greater for more recent events than for less recent ones, and

materiality is greater for events concerning services more closely related to those required by the County than services that are less so. An event is considered most material when it concerns services equivalent or similar to those required by the County, has occurred recently, occurred in close geographic proximity to the County, and involves one or more individuals or organizational departments that may be involved in the conduct of the County contract. Also relevant in this assessment is whether the event involves a relatively large or small amount of money, services or product; whether the event involves a threat to life, health, safety, or property; and whether criminality or possible criminality is involved.

### **Identifying Potentially Adverse Information**

Most adverse information is disclosed by vendors through submission of required vendor disclosure forms. To verify that all relevant information has been disclosed, the department also must conduct a review of publicly available information regarding the vendor. This review includes:

Review all disclosure documents

- Determine whether the vendor demonstrates sufficient capacity (i.e. organizational structure, staffing, financial resources, and experience) to perform the scope of work
- Review all additional required documents (e.g. licenses, insurance, bonds, etc.)
- Review NYC PassPort for adverse information
- Perform a Google search of the vendor for the vendor name associations with the following or similar list of appropriate terms (terms may vary by department) and include a summary of adverse findings (e.g. investigation, violation, default, fraud, debar, bankrupt, lien, OSHA, PESH, stop work, etc.)
- Search other appropriate government websites (sites may vary by department) and include a summary of adverse findings (e.g. NYS Department of Labor, US Department of Labor, US SAM, NYS OMIG for client services, etc.)

Once any adverse or potentially adverse information is identified, for each potentially adverse event, the department must summarize the issue indicating the investigating entity, the substance and nature of the investigation, any findings, any corrective actions taken, and the current status of the investigation. Using this information, the department must answer the following question:

- Is this information sufficient grounds to find the vendor nonresponsible for award of the contract under consideration and/or to end any current contractual relationship between the County and the vendor?

A finding of nonresponsibility has significant implications for the vendor, since subsequent to that determination the vendor must disclose it in future solicitation responses to public entities. Therefore the finding must be based upon evidence of a sufficiently severe failure of capacity and/or integrity on the part of the vendor. Any adverse information which is not deemed to be sufficient for a finding of nonresponsibility must be demonstrated by the vendor to have been addressed sufficiently through implementation of corrective actions and/or plans to ensure that the adverse event(s) shall not impact or recur during the conduct of the County contract under consideration. Corrective actions that may be considered in this regard include, but are not limited to, termination of the employee(s) involved, introduction of new policies and procedures, employee trainings, reorganization of the vendor's structure, introduction of new internal or external monitors, payment of all fines, satisfactory resolution of the matter by the investigating entity, etc.

Departments are required to conduct a vendor responsibility review for each proposed contract award, and are further required to investigate any potentially adverse information that comes to the attention of the department during the conduct of an existing contract. In addition, the Chief Procurement Officer conducts

additional reviews of the vendor responsibility determination.

## **Addressing Vendor Adverse Information**

Per NYS GML §103 and the Countywide Procurement & Compliance Policy (the "Policy"), the County is required to award contracts only to vendors that are "responsible" (i.e., vendors that have the capacity to perform the services required by the proposed contract and the integrity to warrant the award of public funds). The Policy requires the Department Chief Contracting Officer (DCCO) to conduct due diligence to assess a vendor's responsibility and to affirm in the Responsibility Determination that the vendor is responsible to receive the proposed contract award, and furthermore, that this determination must be reviewed and approved by the Chief Procurement Officer (CPO). Particularly when there is material adverse information (MAI) identified in the Responsibility Determination, it is essential to ensure that oversight reviewers responsible for reviewing the MAI are alerted to its inclusion in the contract package. This policy is issued to ensure that any MAI is indicated in the Staff Summary to assist with oversight review of the proposed contract.

To ensure that the presence of MAI is noted on contract Staff Summaries to aid in oversight review of proposed contracts, this policy establishes the procedure to indicate MAI in the Staff Summary and to include an assessment of the MAI in the contract package explaining the department's finding of sufficient vendor responsibility.

## **Contract Package Material Adverse Information Procedure**

For any contract for which MAI has been identified, the following procedure shall be followed:

- On the Staff Summary, indicate at the appropriate question that MAI has been identified.
- Following the Comptroller's Approval Form in the contract package, insert a memorandum from the DCCO to the CPO explaining:
  - the MAI, including what occurred, any corrective actions taken or planned by the vendor, and the current status;
  - the source(s) of the MAI (e.g. questionnaire response, data query, etc.);
  - analysis of the MAI, including why the MAI is not sufficient to find the vendor non-responsible; and
  - mitigating circumstances, such as time sensitive deadlines , limited supply of alternate vendors, substantial difference in price quotes from other vendors, or reasons that the MAI will not materially affect the vendor's ability to perform the contracted services or supply the contracted goods.
- The CPO shall review the memorandum and any related documents as part of the contract review process, and shall approve the contract only if the review of MAI is deemed to be sufficient to justify proceeding with award.

The memorandum described above must include only MAI that has been identified in the related Responsibility Determination on file as approved by the CPO. Departments have an ongoing responsibility to monitor and report any material changes to a vendor's responsibility. In the event that any new MAI is identified in a contract pending oversight approvals or at any point thereafter through the term of the contract, the Responsibility Determination must be revised by the DCCO and reviewed and approved by the CPO.



In determining whether adverse information is "material," please refer to Appendix E of this Policy.

### **Summary of Significant Adverse Information**

Any contract package submitted in ECRS, as well as any contract submitted for Legislative review, shall include a Summary of Significant Adverse Information identifying all adverse information disclosed by the vendor in the vendor's integrity and disclosure forms at the following questions:

Business History Form: questions 10-17

Principal Questionnaire Form: questions 7-13

In addition, the department shall identify in the summary all adverse information discovered that was not disclosed by the vendor in its integrity and disclosure forms.

The DCCO also shall state the reason(s) any adverse information is not a basis for finding the vendor nonresponsible.

### **Vendor Adverse Information Identified Following a Responsibility Determination**

In the conduct of a solicitation or during contract administration, new adverse vendor information may come to the attention of the department. Whenever new adverse information is identified the Department Chief Contracting Officer (DCCO) shall review the information to determine whether that information may cause the vendor to be deemed nonresponsible. In certain circumstances this determination must be made in consultation with the Chief Procurement Officer (CPO). This policy is introduced to ensure that the County makes vendor responsibility determinations in light of new adverse vendor information effectively and in compliance with the Countywide Procurement & Compliance Policy (Policy).

This policy establishes the procedure for the DCCO and CPO to review newly identified vendor adverse information during the course of solicitation or contract administration.

### **New Adverse Vendor Information Procedure**

Per the Policy it is the responsibility of the DCCO to identify, review, and assess all adverse vendor information to determine if it is material or otherwise may prevent a vendor from being deemed responsible to be awarded a contract or to continue to perform services for the County under an existing contract. In certain circumstances the CPO also must review and approve this determination. In particular, per the Policy the CPO must review and approve all Responsibility Determinations (RD) submitted in support of a contract award, amendment, or renewal. When new adverse information is identified subsequent to approval of the RD by the DCCO and/or CPO and prior to execution of a contract by the County Executive, the RD must be revised by the department to include the new information, and then reviewed and approved by the DCCO and the CPO. As appropriate the vendor must submit revised disclosure form(s) reflecting the new information, and any new adverse information must be addressed in writing by the department, including an explanation of the information itself and why it was omitted from the original submission. This information must be incorporated into the contract package prior to proceeding with the award.

When new adverse information is discovered in contract administration by any source including but not limited to an Executive department, the Inspector General, the County Legislature, or the Comptroller, the DCCO must review and assess the information to determine if the vendor continues to be responsible to perform under the contract. In the following circumstances during contract administration the DCCO must consult with the CPO before making a final determination:

- 1) When the adverse information involves an investigation or sanction in which the vendor, affiliate, or subsidiary is the target; crime or possible crime perpetrated by the vendor, affiliate, subsidiary, principal, or any individual performing services related to a County contract; or other significant action or finding by any government entity, whether regarding the vendor or an affiliate or subsidiary;
- 2) When the adverse information regards bankruptcy and/or a public tax lien related to the vendor, affiliate, subsidiary, principal, or individual performing service related to a County contract;
- 3) Any other adverse information identified by the Inspector General or the County Legislature;
- 4) Any other adverse information as directed by the CPO.

The CPO may waive any of the above requirements with notice to the Inspector General.

- Departments are barred from awarding a contract to a vendor that is debarred, suspended, or has an active exclusion as indicated by the federal System for Award Management (SAM) or the NYS Department of Labor. Annually the Chief Procurement Officer shall review vendors on the NYS DOL debarred vendors list to confirm that no vendors on the list are active County vendors in the Vendor Portal. Similarly, annually the Department of Shared Services Office of Purchasing shall review the NYS DOL list to confirm that no vendors on the list are active in ADPICS, and the CPO shall coordinate with the Comptroller's Office to confirm that no vendors on the list are active in FAMIS.
- Making the Responsibility Determination. The Contracting Officer shall use appropriate sources of information to perform due diligence and support determinations of responsibility or non-responsibility. Such information sources may include, but not be limited to:
  - All pertinent databases of debarred, suspended, and ineligible contractors;
  - Records of evaluations of performance, as well as verifiable knowledge obtained by County contracting and audit personnel;
  - Determinations of violations of employment-related federal, state, or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours;
  - Information supplied by the prospective contractor, including bid or proposal information and integrity and disclosure documents, replies, financial data, information on production equipment, and personnel information;
  - Pre-award survey reports; and
  - Other sources such as publications, suppliers, subcontractors and customers of the prospective contractor, financial institutions, other government agencies, and business and trade associations.

A Department Chief Contracting Officer must notify the bidder or proposer of materially unfavorable responsibility information and provide the bidder or proposer an opportunity to submit additional information or explain its actions before adverse action is taken by the County.

- Determination of Non-Responsibility. A department letting a contract by competitive sealed bid or other competitive method may find the lowest responsive bidder(s) to be non-responsible.
- Determination of Non-Responsibility is required If a bidder or proposer who otherwise would have been awarded a contract is found non-responsible, a determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility shall be prepared by the Department

Chief Contracting Officer. A copy of the determination of non-responsibility shall be immediately sent to the non-responsible bidder or proposer. The notification shall state the reasons upon which the determination is based and shall inform the bidder of the right to appeal the determination of non-responsibility, and of the procedure for taking such appeals. Notice to the non-responsible bidder must be mailed no later than two business days after the determination of non-responsibility is made and must inform the contractor of the right to appeal the determination to the Chief Procurement Officer within ten calendar days of receipt. A copy of the determination of non-responsibility shall be sent to the CPO.

- Appeal to Chief Procurement Officer. Appeals to the CPO of the determination of non-responsibility shall be made pursuant to the following procedure:
  - Time for Appeal. Any vendor who is determined to be non-responsible in connection with the award of a particular contract shall be allowed ten days from receipt of the department's notification to file a written appeal of that determination. Receipt of notice by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the CPO;
  - Form and Content of Appeal by Vendor. The appeal by the vendor shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the department finding of non-responsibility. Supporting documentation shall be included;
- CPO Determination. The CPO shall consider the vendor's appeal, and shall make a prompt written decision no later than sixty days after receipt with respect to the merits of the bidder's appeal. The CPO may, in their sole discretion, meet with the vendor to discuss his/her appeal.
- Notification of CPO Decision to Vendor. A copy of the decision of the CPO shall be sent to the vendor.
- Finality. The CPO's decision of a vendor's appeal shall be final.
- Stay of Award of Contract Pending CPO Decision. Award of the contract shall be stayed pending the rendering of a decision by the CPO unless the DCCO makes a determination that execution of the contract without delay is necessary to protect substantial County interests. Where the award is not stayed, the vendor shall be advised of this action in the determination of non-responsibility or if the stay is removed at a later date, notification shall be provided to the vendor no later than two business days after such determination is made.
- Documentation. Documents reflecting the department determination of non-responsibility and evidence of having supplied written notification as required by this Policy shall be sent to the CPO.
- Rehabilitation of Vendors. An application for a declaration of rehabilitation may be made by any vendor who has been found non-responsible by any County department, if such vendor has either declined to

appeal or exhausted the process for appealing such non- responsibility determination(s) as set forth in this section. A declaration of rehabilitation may be considered by department Contracting Officers in making future responsibility determinations. In making responsibility determinations, Contracting Officers may rely upon the declaration of rehabilitation in lieu of requiring a vendor to explain relevant negative responsibility information.

- Time for Filing. No application for a declaration of rehabilitation may be filed prior to the latest date for filing of an appeal of a non-responsibility determination in accordance with this section. The submission of an application for a declaration of rehabilitation shall not affect the time limits set forth in this section for filing an appeal.
- Form and Content of Filing. To apply for a declaration of rehabilitation, a vendor must submit a written application to the CPO. The rehabilitation application shall be certified by the applicant to the effect that all information supplied is true to the best of the applicant's knowledge, information and belief. The application shall state how the applicant has demonstrated its responsibility for future procurement awards, and shall:
  - Demonstrate that the issues leading to the relevant non- responsibility determination(s) or to the relevant negative information have been remedied by the applicant, and
  - Set forth any additional remedies or corrective actions the applicant is willing to undertake as a condition of a final declaration of rehabilitation by the CPO.
  - Remedies. Remedies or corrective actions may include, but are not limited to:
    - Retaining an auditor, monitor, technical consultant or independent private sector inspector general with the consent of the Deputy County Executive for Compliance, Inspector General, or County Chief Procurement Officer to review the applicant's business practices, oversee its performance and/or develop specific remedies with respect to the subject matter of the non-responsibility determination(s) or negative information (See **Appendix W**);
    - Ownership changes and/or reorganizations of the legal structure of the applicant in a manner that appropriately remedies the issues raised in the non-responsibility determination(s) or negative information;
    - Dismissing employees whose actions were the subject matter of the non-responsibility determination(s) or negative information;
    - Entering into certification agreements with the Deputy County Executive for Compliance, Inspector General, or the County Chief Procurement Officer

prescribing corrective actions and/or otherwise appropriately remedying the subject matter of the non-responsibility determination(s) or negative information;

- Resolving judicial or administrative proceedings that were the subject matter of the non-responsibility determination(s) or negative information under terms demonstrating that such concerns have been appropriately remedied; or
  - Engaging in any other lawful action leading to resolution of the issues that were the subject matter of the non-responsibility determination(s) or demonstrating that any negative responsibility information has been appropriately remedied.
- Notice to Departments. The applicant shall concurrently provide a copy of its application for rehabilitation to the Deputy County Executive for Compliance and to the Department Chief Contracting Officer of any department that found such applicant non-responsible.
  - CPO Decision. The CPO shall review the filing, shall consult with the Deputy County Executive for Compliance and may consult with any other relevant government department, prior to making a final decision concerning the application for a declaration of rehabilitation. The CPO may seek additional information from the applicant. Upon review of the filing and any subsequent submission by the applicant, the CPO shall issue a decision granting or denying the application for declaration of rehabilitation. In making such decision, the CPO may consider a broad range of factors, which may include, but is not limited to, the following:
    - The public policy expressed in this Policy that the vendors have the capability in all respects to perform fully the requirements of public contracting and the business integrity to justify the award of public tax dollars;
    - The bearing of any criminal, false, fraudulent or other activities of the vendor, its affiliates and current and past owners, principals, employees, or their associates or other persons or entities on the skill, judgment and integrity of the vendor or on its fitness or ability to perform as a public contractor, and the time elapsed since and seriousness of such activities;
      - Any information produced by the vendor or available from other sources relevant to its rehabilitation, including the adequacy of the remedies or corrective actions identified by the applicant, or to any other factor bearing on the vendor's skill, judgment and integrity or its fitness or ability to perform as a public contractor.

The CPO may condition any declaration of rehabilitation upon the applicant's completion of the specific additional corrective actions, if any, set forth in such declaration. The CPO decision granting or denying the application for declaration of rehabilitation shall be final.

- Notification of Decision. A copy of the CPO decision granting or denying the application for

declaration of rehabilitation shall be mailed to the vendor, with copies to the Vertical Deputy County Executive, the Deputy County Executive for Compliance, the Department Head and the DCCO of any department that found such applicant non-responsible.

- Effect. Nothing in this subdivision shall preclude a Contracting Officer from finding a vendor to be responsible where such vendor has not applied for a declaration of rehabilitation or where an application for such declaration has been denied. Furthermore, nothing in this subdivision shall preclude a DCCO from finding a vendor to be non-responsible, notwithstanding a declaration of rehabilitation.

## **Appendix F: Contents of the Recommendation for Award (RFA)**

The Recommendation for Award shall contain substantially all of the following information:

- Department name;
- NIFS ID#;
- If other than competitive small purchase bid or formal sealed bidding, a summary of method of procurement used;
- If an award is made to the proposer whose proposal represents the best value to the County, a summary of the criteria used in determining best value;
- Date solicitation mailed/issued;
- Number of businesses solicited;
- Date and name of all publications of any advertised notice; if the procurement is a sole source, the date of the notice of intent to enter sole source negotiations;
- Date responses to solicitation opened;
- For bids, the number of responses and the prices received for each bid that was opened (the bid tabulation sheets). For proposals, the number of proposals received, overall technical rating of each proposal, and the proposed price for each proposal that was opened;
- Summary of responsiveness or non-responsiveness determination;
- Explanation of responsibility determination;
- Name, address, telephone number, and federal taxpayer's identification number of recommended contractor(s) and, if more than one contractor, details on the specific items awarded each;
- Dollar amount(s) of contract(s) compared with solicitation estimate(s);
- Basis for award. If award is made to other than the bidder submitting the lowest initial price, detailed reasons shall be included;
- Date and signature of DCCO;
- Date and signature of all required approvals;
- For sole source awards, the number of expressions of interest in response to public advertisement and a summary of the cost/price analysis used to determine that the cost to the County will be fair and reasonable;
- All applicable written determinations and written justifications required by this Policy;
- For services, if applicable, an assessment of vendor's performance during the prior contract period

(overall rating of latest performance assessment); and

- For social/client services, if applicable, date, period covered, and findings of the latest available financial audit report, the name of the CPA firm that conducted it, and whether the CPA firm was unable to express an opinion as to the adequacy of the provider's books and records.



## Appendix G: Contract Approval Path

Unless otherwise provided by County law or this Policy, all contracts, change orders, amendments, advisements, and other procurements shall be subject to the applicable approval path indicated below. Contracts shall not be executed for less than their full value unless specific written authorization to do so is made by the Department Head or the DCCO and such written authorization is provided as part of the Recommendation For Award.

- Documentation. The following documentation shall be submitted for each proposed award:
  - the original executed contract and related proof of funds availability;
  - a request for encumbrance containing:
    - the name, address, telephone number, and federal taxpayer's identification number of the vendor and the address of the contract worksite;
    - the dollar amount of the contract, including the original maximum expenditure and revised maximum expenditure authorized and current encumbrance, and any funding source(s);
    - the type of goods or services to be procured pursuant to the contract;
    - the name of the department that awarded the contract and the procurement identification number;
    - the term of the contract or in the case of a construction contract, the approximate starting and scheduled completion date of the contract (and any subsequent extensions), and the project or sub-project to which the contract relates;
    - the source selection method utilized and, if applicable, whether the vendor in the case of a competitive sealed bid, was the lowest responsive, responsible bidder or, in the case of an RFP, offered the lowest price option;
    - the number of responses to a solicitation, invitation to bid, or RFP (excluding a response of "no bid" or "no proposal");
    - an indication whether the vendor is a not-for-profit organization or has been certified by NYS or the County as a women-owned, minority-owned business enterprise, disadvantaged business enterprise, or service-disabled veteran-owned business enterprise; and
    - any other information requested by the CPO, Comptroller, the Legislature, or NIFA, or required by law.
  - all required vendor integrity and disclosure forms;
  - copies of the Recommendation for Award and the Pre-Solicitation Review required by this Policy;
  - in those cases where contracts have been changed pursuant to this Policy, a determination by the DCCO must be made explaining good and sufficient cause for such contract change. Where such

explanation pertains to a request for additional time to complete a new procurement to replace a current contract, the explanation shall state the date by which such new procurement will be completed.

### **Purchases Processed by the Office of Purchasing in the Department of Shared Services**

- Purchases Less Than \$500.00—The Department of Shared Services Office of Purchasing solicits all purchases of less than \$500.00. No competition is required. Approval of the purchase order is at the discretion of the Director of the Office of Purchasing (“Director”). Execution of the purchase order constitutes certification by the Director that the goods or services are required by the County, the vendor’s offer is responsive to the solicitation, the awarded vendor is deemed responsible for the award, and that the price is fair and reasonable. Additional requirements are provided in Methods of Source Selection below.
- Purchases of \$500.00 or greater, and less than \$3,000.00—A minimum of three vendors must be solicited for verbal quotes. Approval of the purchase order is at the discretion of the Director of the Office of Purchasing (“Director”). Execution of the purchase order constitutes certification by the Director that the goods or services are required by the County, the vendor’s offer is responsive to the solicitation, the awarded vendor is deemed responsible for the award, and that the price is fair and reasonable. Additional requirements are provided in Methods of Source Selection below.
- Purchases of at least \$3,000.00 but no greater than \$10,000.00—These purchases follow the same process as for purchases of at least \$1,000.00 and less than \$3,000.00, but vendor quotes must be provided in writing by issuing a written request for quotes.
- Direct Purchase Orders (DPO)—DPOs are subject to the following approvals:
  - OMB must certify that sufficient funds are available in the requesting department’s budget
  - The Comptroller must approve the DPO and certify that funds will be encumbered for its execution

### **Purchases of greater than \$10,000**

These purchases are solicited as Formal Sealed Bids or use other procurement methods as indicated below.

- Formal Sealed Bid—All formal sealed bid contracts are subject to the following approvals:
  - OMB must certify that sufficient funds are available in the requesting department’s budget
  - IT must approve any information technology goods and services purchase
  - The Office of Fleet Management must approve any purchase or lease that relates to motor vehicles
  - DPW must approve any purchase that involves capital funds
  - The Director of Purchasing or their delegate must approve the contract unless it is a public works contract in which case the DPW Department Head or DCCO approves it
  - The Comptroller must approve the contract and certify that funds will be encumbered for its

execution

- The Rules Committee of the Legislature must approve the contract if the award exceeds \$100,000.00
- For awards equal or greater than \$50,000.00 that include County funds, or awards that include County funds to a vendor that has received total awards equal to or greater than \$50,000.00 during the past twelve months, NIFA must approve the contract. Purchase orders and blanket purchase orders are generally exempt from NIFA approval, unless the purchase is encumbered against a contractual line, is for the purchase of personal services, and meets the \$50,000 threshold.
- **Request For Proposals (RFP)**—All RFPs are subject to the same approvals as those required for Formal Sealed Bids described above, except that Rules Committee approval is required for all personal services contracts in excess of \$1,000.00.
- **Streamlined Competitive Proposals (SCP)**—All SCPs are subject to the same approvals as those required for RFPs described above.
- **Formal Sealed Bids for DPW Construction Contracts**—All formal sealed bids for DPW construction contracts are subject to the same approvals as those required for formal sealed bids described above.
- **Architectural, Engineering, Surveying, and Related Personal Services for DPW Contracts**--All construction-related personal services contracts are subject to the same approvals as those required for RFPs described above.
- **Emergency Contracts**—Emergency contracts are subject to the following requirements and approvals:
  - Goods and Non-Personal Services
    - The Commissioner of Shared Services recommends that the County Executive declares an emergency
    - The County Executive issues a written emergency declaration, copied to the Inspector General
    - Purchasing makes the purchase on the open market without need for competitive sealed bidding, although maximum practicable competition must be exercised and documented to justify that the price is fair and reasonable
    - The purchase must be limited to the amount and term necessary to remediate the emergency in the judgment of the Shared Services Commissioner
    - If the contract exceeds \$100k or is for a term of over one year, the Legislature must ratify the contract at the next meeting
      - Until the Legislature ratifies the contract, expenditures must be limited to \$100k
    - The Comptroller must approve and encumber funds for the contract

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- Construction

- The County Executive must issue a declaration of emergency, copied to the Inspector General
- The purchase must be limited to amount and term necessary to remediate emergency
- The contract must be approved as to form by County Attorney
- Purchase is made without need for competitive sealed bidding, although maximum practicable competition must be exercised and documented to justify that the price is fair and reasonable
- If the contract involves an expenditure in excess of \$100k or is for a term of over one year, the Legislature must ratify the contract at the next meeting
  - Until the Legislature ratifies the contract, expenditures must be limited to \$100k
- The Comptroller must approve and encumber funds for the contract

- Personal Services

- The County Executive must issue a declaration of emergency
  - Purchase is made without need for competitive sealed bidding, although maximum practicable competition must be exercised and documented to justify that the price is fair and reasonable
  - OMB must certify that sufficient funds are available in the requesting department's budget;
  - The Comptroller must approve the contract and certify that funds will be encumbered for its execution
  - The contract must be approved by the County Attorney
  - Emergency contracts in excess of \$10,000.00 must be approved at a session of the Rules Committee of the Legislature to be convened within 12 hours of notice to the Presiding Officer and Chair of Rules if there is a threat to health and safety of County residents, and within 72 hours if the emergency does not pose an immediate threat to health and safety.
- **Sole Source**—All Sole Source contracts are subject to the same approvals as those required for either goods/non-personal services or for personal services as described above.
  - **Intergovernmental, Government-To-Government, and Cooperative Contracts**—In addition to all approvals required by the governmental entity and cooperative entity as applicable, all intergovernmental, government-to-government, and cooperative contracts are subject to the same approvals as those required for

formal sealed bids described above, with the exception that NIFA does not review awards issued between governments or awarded by piggybacking New York State Office of General Services centralized contracts.

- **Preferred Source**—All preferred source contracts are subject to the following approvals:
  - OMB must certify that sufficient funds are available in the requesting department’s budget
  - The Comptroller must approve the contract and certify that funds will be encumbered for its execution
- **Advisements**—Advisements, which encumber additional funds under a contract in an amount which is cumulatively no more than the maximum contract amount, must be approved by the initiating department, OMB, and the Comptroller’s Office.
- **Amendments**—Contract amendments require the following approvals:
  - DCCO and CPO approval of the Responsibility Determination
  - All ECRS and subsequent approval processes that were required for the original contract
- **Renewals**—Renewals require the following approvals:
  - DCCO and CPO approval of the Responsibility Determination
  - All ECRS and subsequent approval processes that were required for the original contract
  - Contracts issued by the Office of Purchasing may be renewed at the discretion of that office
    - Written advance notice of any anticipated renewal must be provided to the vendor prior to executing any renewal
- **Capital Change Orders**—Capital change orders must be approved by the Change Order Committee.

## Appendix H: Countywide Procurement Systems

### Procurement Systems Utilized

Advanced Purchasing and Inventory Control System (ADPICS)—ADPICS provides online generation, submission, and approval of requisitions, purchase orders, and blanket purchase order contracts processed by the Office of Purchasing.

Solicitation Tracking System (STS)—STS records a department’s intent to initiate a procurement for personal services, and provides online review and approval workflow for development, conduct, and proposed award of the procurement including Presolicitation Review, Responsibility Determination, Recommendation For Award, and transmission of data to the Electronic Contract Routing System (see below).

Electronic Contract Routing System (ECRS)—ECRS provides online review and approval workflow for proposed contract award packages by the following entities:

- OMB
- County Attorney
- DPW (for capital contracts)
- Compliance
- Deputy County Executive
- Per section 300-A of the Nassau County Charter, the Inspector General may review any solicitation prior to filing a contract for Legislative review
- Legislative Affairs
  - Legislature
  - Comptroller
  - NIFA

Vendor Portal—The Vendor Portal is the County website that vendors use to register with the County, select commodity codes to receive relevant solicitations, participate in small purchase bids, and submit vendor integrity and disclosure forms and other required vendor information. The site also allows County and political subdivision staff to search County blanket purchase order contracts and fuel prices.

Following are the roles assigned within each of the above systems:

#### • ADPICS

- Purchasing Agent of the issuing department - generates requisitions
- Departmental Approver – approves requisitions.
- OMB Approver – approves funding for requisitions.
- CE Approver – approves requisitions for programmatic concerns.
- Office of Purchasing Buyer – reviews requisitions; generates solicitations, purchase orders and blanket contracts.
- Office of Purchasing Buyer – reviews requisitions; generates solicitations, purchase orders, and blanket contracts.
- Office of Purchasing Approver – approves the requisitions, purchase orders and blanket contracts

- Comptroller Approver – approves purchase orders and blanket contracts

- **Solicitation Tracking System**

- Purchasing Agent of the issuing department—generates Requests To Initiate, solicitations, Pre-solicitation Reviews, Responsibility Determinations, and Recommendations For Award; uploads supporting documents.
- Department Head / Department Chief Contracting Officer (DCCO) – reviews, approves, and submits Requests To Initiate, Pre-Solicitation Reviews, Responsibility Determinations, and Recommendations For Awards.
- Vertical Deputy County Executive – reviews and approves Requests To Initiate.
- Chief Procurement Officer - reviews and approves Requests To Initiate, Pre-Solicitation Reviews, Responsibility Determinations, and Recommendations For Award.

- **Electronic Contracting Routing System**

- Purchasing Agent/Buyer of the issuing department—prepares all solicitation documents and acts as the issuing department’s point of contact for the contract award
- Department Head/DCCO—reviews and approves submission and indicates NIFS approval
- Budget Analyst—reviews and approves financial elements of the submission; indicates NIFS approval
- Budget Director—reviews and applies NIFA approval
- County Attorney—reviews and approves insurance submissions; reviews and approves contract as to form; determines whether Legislative review is required; and indicates NIFS approval
- DPW capital reviewer—reviews and approves capital funds for proposed contract
- Chief Procurement Officer—reviews packages for completeness; ensures all disclosures and related information are adequate; uploads revised documents as necessary; reviews and approves packages prior to contract certification by the Clerk of the Legislature
- Deputy County Executive for Compliance—reviews packages for significant issues and overall compliance with County policies
- Vertical Deputy County Executive (DCE overseeing the issuing department)—reviews packages for overall compliance and programmatic justification
- Inspector General—Per section 300-A of the Nassau County Charter, the Inspector General may review any proposed contract prior to filing for Legislative review.
- Legislative Affairs—reviews packages for completeness;; records actions taken by the Legislature; uploads revised documents when required by the CE, Legislature, Comptroller, or NIFA; prepares redacted copies of contracts to be certified
- Clerk of the Legislature—reviews packages for completeness; enters Legislative action and contract certification data
- Comptroller (Front Office)—reviews packages for conformance with Comptroller requirements; flags not-for-profit contracts
- Comptroller (Claims)—reviews payment structure and related issues
- Comptroller (Legal)—reviews contracts for Legal compliance; determines whether NIFA review is

required

- Deputy Comptroller—reviews packages for overall compliance with Comptroller requirements
- Comptroller (Accounting)—records NIFS approval and forwards contract package
- NIFA—reviews and approves packages subject to NIFA review

- **Vendor Portal**

- Vendor—establishes a vendor account, directs principals to establish their own accounts and confirms association with the vendor, selects commodity codes, maintains vendor information, participates in small purchase bid solicitations, submits vendor integrity and disclosure data and other required information in the Vendor Integrity Database
- Vendor Principal—establishes a principal account, requests association with the vendor, submits a principal questionnaire as required
- Department of Information Technology—verifies vendor, principal, and County employee accounts
- Public Entity—establishes an account as a public entity, searches available County blanket purchase order contracts
- Office of Purchasing staff—solicits and proposes award of competitive small purchase bids, reviews vendor integrity and disclosure data and other required information, searches available County blanket purchase order contracts
- County staff—reviews vendor integrity and disclosure data and other required information, searches available County blanket purchase order contracts



## **Appendix I: Formal Sealed Bids**

A department seeking to procure goods or services by formal sealed bidding must first obtain authorization of the Deputy County Executive (“DCE”) overseeing the Department. This approval may be verbal, by email or written. Email is recommended. The approval is not recorded in the ADPICS system and does not have to be verified by the Office of Purchasing before proceeding with a formal sealed bid.

The department then should enter a requisition (purchase request) into the on-line system maintained by the Office of Purchasing for making purchase requests. This system is currently known as ADPICS. The requisition must include proposed specifications, a justification for the purchase and a realistic proposed delivery date for the good or service. In addition, departments are encouraged to include names and addresses of potential vendors, a reasonable cost estimate, whether in-house alternatives were investigated, and whether there are possible buying and leasing alternatives. Whenever reasonably practical, departments are encouraged to request standard commercially available products rather than specially designed items. After a department submits a requisition, all further processing of the purchase is handled by the Office of Purchasing.

The ADPICS system sends the requisition first to OMB which verifies that there are adequate funds in the department’s budget for the requested purchase before it is sent to the Office of Purchasing. When the Office of Purchasing receives a request, it assigns a Bid Number which is used to identify the procurement at all ensuing stages of the procurement process.

A department may obtain items previously procured under a blanket purchase order by submitting a direct purchase order through the ADPICS system to the Officer of Purchasing.

### **Public Notice**

The Office of Purchasing shall have a synopsis of the Invitation to Bid published in Newsday or another official newspaper of the County at least five days before bids are scheduled to be opened. In addition, if appropriate, the notice may be published in a relevant trade publication or an electronic version thereof.

The notice shall set forth the time and place where bids will be publicly opened, as well as the amount of any security that must be deposited with the bid.

If the full Invitation to Bid is not published, the notice shall state where a full copy may be obtained.

The Office of Purchasing also will send the Invitation to Bid or a notice as to where the Invitation to Bid may be obtained to all vendors who have registered with the Office of Purchasing as vendors of the good or service in question. The Office of Purchasing has a “vendor/bid list request form” and a vendor online application for Registration as a County vendor that any interested vendor may submit to become registered with the County.

The Office of Purchasing also will send the notice to the Clerk of the Legislature and to IT which publishes the Invitation to Bid on the official County web site at <http://www.co.nassau.ny.us/Purchasing/index.html>.

At least thirty days prior to public advertisement of the solicitation, the requesting department shall forward the proposed purchase requisition to the Office of Minority Affairs. The Office of Minority Affairs will, as appropriate, initiate outreach to certified minority- and women-owned business enterprises, disadvantaged business enterprises, and service-disabled veteran-owned business enterprises. A copy of this notice shall be included as part of the requisition submitted to Purchasing.

## **Preparation and Distribution of Solicitation (Invitations to Bid)**

The Office of Purchasing will prepare the Invitation to Bid for a formal sealed bidding procurement, upon receiving from the procuring agency recommended specifications to include in the Invitation to Bid.

The specifications shall set forth the technical requirements for a material, product or service, as well as the criteria for determining whether these requirements are met.

Specifications can be in the form of a detailed description of the required supplies, equipment or services, including, if appropriate, descriptions of raw materials and construction methods. There are known as “design” specifications.

Specifications also can be set forth in terms of the tasks that the good or services are intended to perform or in terms of standards of performance. These are known as “functional” or “performance” specifications.

Specifications should be drawn in a manner that will maximize competition should be drawn in a manner that will maximize competition, therefore be as clear and precise as is reasonably practicable, consistent with the County’s needs.

The Invitation to Bid shall include a notice that a contract award is subject to applicable provisions of federal, State, and local laws and executive orders, including, for example, those requiring equal employment opportunity.

The invitation to Bid should state that the County reserves the right to reject all bids, to reject any bid that is not responsive and to reject any bidder that it deems not responsible.

### **Amendments to Invitation to Bid**

A reasonable period prior to the deadline for submitting bids, the County may amend the Invitation to Bid, and this includes amendments that extend the deadline where it is in the County’s interest to do so. Any amendment shall be published on the County’s web site. The Invitation to Bid shall be advise all potential bidders to regularly check the County’s web site for possible amendments to the Invitation to Bid.

### **Opening of a Bid**

Bids generally shall be submitted on a Formal Sealed Bid form. Bids received are not opened until the time set for the bid opening in the notice for bids. An official from the Office of Purchasing designated as the authorized buyer opens each bid and records it on the Summary of Bids worksheet with a witness present. Copies of the bids are available for public viewing.

### **Receipt and Handling of Bids**

Late bids, regardless of the circumstances, cannot be accepted. In addition, a bidder may withdraw or modify a bid by giving written notice received in the office designated to receive bids prior to the opening of bids. If a bid is withdrawn prior to the opening of bids, any bid bond or bid deposit shall be returned to the bidder. However, a bid bond or bid deposit shall be forfeited by a bidder that withdraws its bid after the opening of bids if that bidder otherwise would have been the lowest bidder. The department shall retain all documents relating to a withdrawn or modified bid.

A minor, technical and non-substantive mistake in a bid can be corrected after bids are opened provided that such correction would not materially prejudice other bidders, subject to approval by the Director of Purchasing.

### **Bid Withdrawals for Formal Sealed Bids**

In the conduct of formal sealed bid solicitations, including but not limited to construction bids, there are occasions in which a bidder requests to withdraw its bid due to a mistake or error where the mistake or error is not evident on the face of the bid following the bid opening. Withdrawal of bids due to such a mistake or error may be allowed when requested timely, properly documented, and justified to the satisfaction of the County. In determining whether a requested bid withdrawal is warranted, the County shall be guided by GML §103 (11) as described below.

### **Bid Withdrawal Request Procedure**

Any bid withdrawal request by a bidder where the mistake or error is not evident on the face of the bid following the bid opening shall meet the following criteria:

- be submitted by the bidder in writing addressed to the authorized County contact identified in the solicitation;
- be prior to award of the contract or within three days after the bid opening, whichever period is shorter;
- the price bid was based on an error of such magnitude that enforcement would be unconscionable;
- the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- it is possible to place the County in the position it was in prior to the bid withdrawal request.

Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this policy shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder.

Thereafter, the awarding department may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake is strictly prohibited.

To support and justify any request to withdraw a bid, the bidder shall submit to the County within the timeframe stipulated above:

- original, complete documents demonstrating the error and the intended correct bid; and
- a signed and sworn explanation by a principal of the bidder specifically describing the circumstances as to where, when, how, and by whom the mistake was committed, including an attestation that all information and documentation provided to the County is true, accurate, and unaltered. In addition, any claim that the bidder intended, but failed, to apply a markup, discount, or other differential also should be supported and ascertainable by clear evidence.

The County reserves the right to request additional information from or meet with the bidder to discuss the requested withdrawal and supporting documents prior to making a determination.

Based on all information presented, the Department Chief Contracting Officer (DCCO) shall determine whether to grant or reject the bid withdrawal request. Any bid withdrawal accepted by the DCCO also

requires additional approval by the Chief Procurement Officer (CPO).

### **Records of Bid Withdrawal Requests**

For each bid withdrawal request received, the DCCO shall generate and retain a record-of-decision memorandum outlining the circumstances and rationale for allowing or declining the bid withdrawal. The DCCO shall maintain a record of all such memoranda on file. In addition, a copy of each memorandum shall be submitted to the CPO for retention in a central file. As applicable, the record-of-decision memorandum also shall be included in the contract package submitted for legislative approval.

### **Evaluation of Bids**

Only evaluation factors and formulas stated in the Invitation to Bid can be considered in determining the lowest responsible bidder. The Director of Purchasing or their designee determines the lowest responsive, responsible bidder, or in a case where there is a multiple award, the lowest responsive, responsible bidders. The lowest bidder is the bidder offering the lowest aggregate cost.

The Director of Purchasing or their designee must determine if a bid is responsive in that it satisfies all specifications and conforms to all material requirements of the Invitation to Bid. For example, the Director of Purchasing shall determine that a bid is non-responsive if:

- The bidder's signature is missing.
- The bidder failed to post the required bid security.
- The bidder failed to initial in ink any alteration of price.
- The bidder failed to submit any required certificates or licenses, as stated in the Invitation to Bid.
- The bidder failed to respond fully to all the literal terms of the specifications.
- The bidder failed to attend a "mandatory" bidders' pre-bid conference.
- The bid is qualified or conditional (the bidder takes exception to the terms of the bid).

The above list is not all-inclusive. Any material failure by the vendor to meet the formal requirements of the solicitation may be grounds for a finding of non-responsiveness.

If the Director of Purchasing determines that the low bid is still not a fair and reasonable price in light of prices bid in previous procurements, current market prices or other relevant considerations, he or she may try to negotiate a lower price with the lowest responsive, responsible bidder only, or may reject all bids and begin a new procurement. The Director of Purchasing also may try to negotiate with the lowest responsive, responsible only for terms and conditions that are more favorable to the County, provided that there is no increase in the price.

### **Canceling Invitation to Bid After Opening**

- There may be various reasons to cancel an Invitation to Bid
- The specifications turned out to be inadequate or ambiguous.
- All responsive bids are at unreasonable prices.
- Only one bid was received, and the County cannot determine if the bid price is reasonable

- Bids were collusive or submitted in bad faith.
- Cancellation is in the County’s best interest for other reasons.

The Director of Purchasing shall document the reason for canceling an Invitation to bid after bids have been opened.

### **General Approval Path**

All formal sealed bidding contracts are subject to the following approvals:

- OMB must certify that sufficient funds are available in the department’s budget;
- IT must approve any purchase that involves computer- related equipment;
- DPW must approve any purchase that involves the expenditure of capital budget funds even if it is not for a public works project;
- The Director of Purchasing or their designee must approve the contract unless it is a public works contract in which case DPW approves it; and
- The Comptroller must approve the contract and certify that funds will be encumbered for its execution.
- All contracts in this general approval path are executed by the Director of Purchasing or their designee.

### **County Executive/County Attorney Approval**

Pursuant to Section 2206 of the Nassau County Charter, the County Attorney and the County Executive or a Deputy County Executive to whom such power has been delegated must authorize the issuance of purchase orders or contracts related to construction and maintenance applicable to the Department of Public Works and any contracts that are not for the purchase of supplies, materials, equipment and services in connection with the operation, renovation or maintenance of County facilities or equipment. The range of competitive sealed bid contracts in this latter category of contracts is fairly narrow. It includes certain types of service contracts for which formal sealed bidding is an appropriate procurement method, such as:

- a. Translation services
- b. Bus transportation services
- d. Installation of software

All contracts and purchase orders in this special approval path are executed by the County Executive or a designated Deputy County Executive (“DCE”) and must be filed with the Clerk of the Legislature after they are executed.

## **Legislative Approval**

Where the award to a single bidder exceeds \$100,000, both direct purchase orders and formal sealed bidding contracts for goods and non-personal services procured pursuant to section 103 of the General Municipal Law must be approved by the Rules Committee of the County Legislature.

All such contracts and purchases must be transmitted to the County Attorney's Office with a Staff Summary form completed by the Office of Purchasing (or in the case of DPW public works contracts, by DPW). The County Attorney's Office shall forward the contract with a Rules Committee Resolution Form to the County Executive's Director of Legislative Affairs who shall submit it to the Legislature once all required approvals are obtained. All contracts submitted to the Legislature must be accompanied by a statement as to whether the Inspector General has reviewed or investigated the contract. In addition, for any contract submitted for approval after the term of the contract has begun, a Contract Delay Memo explaining the reason(s) for the delayed submission shall be included.

## **Appendix J: Requests For Proposals**

### **RFP Preparation**

The RFP document must incorporate each of the elements set forth in the County's Procurement Policy. The Model RFP template is included at the end of this document. The principal sections of the RFP include:

- 1) A statement of the purpose of the RFP
- 2) General information including the County's contact person, the timetable for proposal submission, instructions regarding the form and content of proposals, and relevant legal notices
- 3) Specifications, including a detailed statement of the scope of services to be performed, the required qualifications of proposers and a timetable for completing the work
- 4) Evaluation criteria and relative weight of criteria.

When drafting an RFP for a given service for the first time, it is useful to look at other RFPs for comparable or related services that the County previously has issued. When drafting specifications, RFPs from other jurisdictions for similar services are worth consulting also. The CPO should be consulted if there are any concerns regarding the structure or viability of an RFP at any stage of the process.

Requests For Proposals and other competitive solicitations that are awarded based on both quantitative and qualitative factors are awarded to the vendor that offers the best combination of cost, quality, and efficiency to the County, also known as the best value. Solicitations to be awarded on the basis of best value are subject to some extent to the judgments of the evaluators on the selection committee. Therefore, to allow for consideration of qualitative factors as well as quantitative ones in a fair and open manner, RFPs (and also Streamlined Competitive Proposals) must be conducted in a manner that is transparent in methodology and selection process. This requires sufficient planning and carefully documented implementation to ensure a fair and open process. The essential elements of determining best value among a number of proposals include the following:

- A clear statement in the solicitation of the evaluation criteria, and a detailed evaluation tool that will be used to measure offers against that criteria taking into consideration elements of cost, quality, and efficiency specifically related to the purpose of the solicitation
- A qualified and appropriately representative selection committee that is:
  - Knowledgeable of the intent, specifications, and requirements of the solicitation
  - Available to participate in all necessary committee meetings
  - Free of any conflict of interest regarding the solicitation (this must be certified in writing to the authorized solicitation point of contact prior to establishing the committee)
  - Sworn to keep all knowledge of the proposals and committee discussions confidential until any award(s) resulting from the solicitation are officially proposed or the solicitation is canceled (again this must be certified in writing to the authorized solicitation point of contact prior to establishing the committee)
  - Documented determination of which committee members shall vote during the course of the evaluation process (determined prior to establishing the committee)

- A written determination prior to establishing the committee of the award process to be employed (e.g. short list established by minimal technical point requirement, cost per technical point, price negotiation with the highest-rated technical proposal, etc.)
- Strict adherence to the evaluation tool and process
- Clear documentation of any determinations made and the reasons therefore; documentation must be provided concurrently with the determinations made

A proposal offering best value to the County is the one presented by a responsive, responsible vendor that offers the best combination of cost, quality, and efficiency. Each of these criteria may include a variety of elements of greater or lesser importance to the County depending upon the specific solicitation. In a circumstance where there is an urgency for performing work as soon as possible, such as in the aftermath of a natural disaster or unanticipated equipment failure, or when non-County funds may be lost, cost and quality may be weighted less significantly than efficiency. In a circumstance where quality is paramount, as may be the case when hiring an artist or legal counsel with particular expertise, quality may be weighted more highly than the other criteria. Finally, in a circumstance where the budget is severely restrained, cost may outweigh quality and efficiency.

Following is a list of some of the elements that may need to be considered in determining the proposal offering best value in a solicitation.

Components of cost may include:

- Unit costs
- Installation costs
- Freight costs
- Training costs
- Maintenance and ongoing support costs
- Service fees
- Pass-through costs
- Licensing fees
- Disposal costs
- Interest costs
- Start-up costs
- Contract close-out/transition costs

Components of quality may include:

- Experience
- Qualifications of key staff
- Certifications and licenses
- Past performance
- References

Components of efficiency may include:

- Vendor capacity
- Location



- On-hand staff and stock
- Existing supply chain network
- Pre-existing contractual obligations
- Financial resources
- Familiarity with County operations and requirements

When establishing requirements for an RFP, the department must be as detailed and clear as possible. This is essential to communicate to the vendor community what elements of the specification are of greatest importance to the County, and additionally the evaluation tool must reflect these priorities. Effective solicitation is possible only when the County's needs are clearly and accurately communicated, and those priorities subsequently are reflected during contract administration. Vendor performance issues or disputes may occur when the RFP has failed to state the County's expectations effectively in advance of the contract.

In addition to the items listed above, attachments to the RFP must include:

- The Standard Clauses for Nassau County Contracts (Appendix E)
- Equal Employment Opportunities for Minorities and Women (Appendix EE)
- Cost Proposal Worksheet
- Required Disclosure documents

To ensure that all necessary language and documentation are included in the solicitation, the Model RFP template most recently issued by the County Attorney should be used as the basis of every new RFP.

#### **Initiating an RFP:**

- To begin a procurement for personal services, the department head or DCCO must submit to the Vertical DCE the Request to Initiate form.
- The RTI must be approved by the Vertical DCE and the CPO.
- In certain circumstances, such as where an RFP is being released on behalf of more than one agency, the CPO may designate the head of one of the departments as the official responsible for preparing the RFP and may designate that person or the Director of Purchasing as the official responsible for publishing the RFP and accepting proposals.
- The department approved by the CPO to prepare the RFP then prepares the RFP.
- The department must complete and submit to the Department of Information Technology the Mandatory Form and request public notice of the solicitation as required below.

What information to include in an RFP:

As stated above, procurement officials exercise substantial discretion in determining how to formulate an RFP. However, in general, an RFP should include each of the sections listed below.

Purpose/General Information:

- a general description of the service that the County seeks
- the name of the person in the County to contact for further information

- the number of copies required
- a timetable of dates relevant to proposal submission
- a notice that the contract award is subject to the applicable provisions of federal, State, and local laws and executive orders, including, for example, those requiring equal employment opportunity
- a notice that proposers shall identify any portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, pursuant to the New York Public Officers Law, Article 6 (the “Freedom of Information Law”), may not be disclosed by the County. Such information must be easily separable from the non-confidential sections of the proposal
- the required format
- the required contents
- a page limitation
- a notice that proposals may be withdrawn or modified prior to the deadline for submitting proposals, but that following the deadline, submitted proposals shall be irrevocable for such period as is specified in the RFP
- a notice that although discussions may be conducted with the highest ranked proposers submitting responsive proposals, an award may be made without any discussion.

Specifications – The RFP shall include specifications of the service to be performed. Among other things, the specifications may include:

- a detailed statement of the scope of the services to be performed
- a description of the materials, equipment and methods that are to be used to deliver the services
- a timetable of dates for tasks to be completed
- the goal sought to be accomplished
- the performance standards that are to be met and the tests that are to be applied to determine if the standards are met
- the required qualifications of proposers
- the number and type of required references
- financial and other information needed from proposers

### **Publication of RFP**

A synopsis of the RFP should be published a reasonable period of time before proposals are due to be submitted, but no less than 15 days prior to the published proposal due date. The notice shall set forth the name of the procuring department, the RFP number, a description of what is being purchased, how the full RFP can be obtained, the name and contact information for the person at the department to whom questions about the RFP may be addressed, any eligibility requirements for submitting proposals, and the deadline and place for submitting proposals. The synopsis shall be published in:

- the official newspaper of the County;

- a trade or professional journal and/or on the web site of a trade or professional association that is likely to reach potential vendors; and/or
- a commercial solicitation posting website that is likely to reach potential vendors.

Notice to all County vendors registered for the applicable commodity also shall be provided by posting on the County's solicitation board through submission of the RFP to the Department of Information Technology. In addition, the RFP synopsis may be distributed to qualified vendors known to the department.

For any solicitation for which an advertisement is not placed in the official newspaper of the County, written justification approved for the advertisement placement selection shall be approved by the CPO and included in the procurement file.

In addition, the notice of intent to issue the RFP must be submitted to the Office of Minority Affairs at least 30 days prior to the date of publication of the advertisement, or otherwise obtain a waiver from OMA. The Office of Minority Affairs will, as appropriate, initiate outreach to certified minority- and women-owned business enterprises, disadvantaged business enterprises, and service-disabled veteran-owned business enterprises.

At least thirty days prior to public advertisement of the solicitation, the requesting department shall forward the RFP to the Office of Minority Affairs.

### **Pre-Solicitation and Pre-Proposal Conferences**

Although it is not mandatory, it often is useful to hold a Pre-Solicitation Conference by issuing a draft RFP to all vendors registered for the NIGP commodity code and any other interested vendors prior to advertising the solicitation; or a Pre-Proposal Conference a reasonable period of time after publication of the RFP and prior to the deadline for submission of an RFP. These conferences may help to clarify the RFP and also be used by the agency to gauge the level of interest among potential service providers. Attendance, meeting minutes, and any resulting Q&A or other written communications must be recorded and kept in the procurement file, and any records regarding Pre-Proposal conferences are to be incorporated into the final RFP document referenced in any resulting contract.

### **Amendments to the RFP**

An RFP may be amended at any time prior to the deadline for submitting proposals. Any party that has requested the RFP shall promptly be notified in writing or by email about any amendment to the RFP. In addition, all such amendments or addenda shall be published in the same manner as the original RFP. Parties receiving an amendment shall be required to send a written acknowledgment of receipt.

### **Establishment of Selection Committee**

Before the RFP is issued, the department shall establish a Selection Committee (also known as an Evaluation Committee) to review the proposals. Normally, the Selection Committee should be composed of no fewer than three qualified voting individuals. The Committee will be headed by a chairperson who will run the meetings and be responsible for the distribution, collection, and retention of all materials. The Selection Committee may appoint one or more nonvoting persons with appropriate expertise to serve as advisors to it with respect to technical or price issues. The Committee chairperson also may be nonvoting.

#### **Composition of the Committee**

The membership of the committee, including its chairperson and the voting status of each member, should be determined at the time the solicitation is issued to the public or shortly thereafter, and, in no instance, should membership be established following receipt, opening, and distribution of the proposals. The members should

be individuals with significant knowledge of the services to be procured. It is crucial to the vendor selection process that each member is free to act with independent judgment. Accordingly, when possible, it is preferable to avoid having a subordinate and a superior participate together in a committee. However, it is understood that there are circumstances where a subordinate and a superior are needed to participate to provide essential expertise in the evaluation process, to provide guidance in the conduct of the committee, and for other justifiable reasons. Whenever a subordinate and a superior participate in a committee together, the independence of the members must be emphasized and ensured. If the independence of the voting members cannot be ensured, one of the members in the relationship should recuse him- or herself. With prior approval of the CPO the committee may include one or more non-County employees when their inclusion is essential to provide technical expertise and/or experience necessary to ensure that the committee selects the vendor(s) offering best value to the County. Non-County members of evaluation committees must sign the three required certifications and are subject to the same restrictions as County employees are regarding confidentiality, conflicts of interest, and other aspects of conduct of the committee.

An evaluation committee typically is comprised of 3 to 7 voting members, plus possibly some nonvoting members. In addition to those who will be responsible for managing the services, members also may be Subject Matter Experts with respect to essential, related functions such as budget, accounting, or end users impacted by the services. Not all members of the committee must be voting members. Prior to establishing the committee, voting and nonvoting members are encouraged to review the solicitation, attend any related meetings, and familiarize themselves with any questions from vendors, answers provided, and amendments issued as part of the solicitation. All information shared and discussed within the committee is confidential during, and with respect to certain information following, the committee's tenure.

The committee is headed by an individual (chairperson) named as the authorized contact. The chairperson may or may not be a voting member of the committee. The chairperson alone is the only person in the County authorized to communicate with vendors and others outside the committee regarding the solicitation (also known as the designated point of contact). The chairperson must review all technical proposals for responsiveness and finalize the evaluation tool to be used to rate the proposals. Any proposal deemed nonresponsive should be treated in accordance with the Policy.

### Establishing the Committee

If the Department chooses to do so, prior to the initial meeting of the evaluation committee, it may distribute to all intended members of the committee the list of vendors that have submitted proposals along with the three-required evaluation committee member certification forms for review, execution, and submission to the committee chair. Once all certifications have been received, the chairperson may distribute proposals only to those committee members that have submitted the required certifications and have no potential conflicts. The committee chair must maintain all signed certifications and communications related to the evaluation committee in the procurement file. Any of the above steps that have not occurred prior to the initial evaluation committee meeting shall be completed during the initial meeting as described below.

After all timely proposals have been received, the committee will formally convene at an initial meeting. Notice of this and all subsequent committee meetings relating to the procurement of goods or services costing more than \$100,000 must be provided to the Inspector General within 24 hours of scheduling the meeting, and no meeting shall be held prior to 24 hours after notice has been provided. Notice to the Inspector General shall also apply where the aggregate cost of goods or services obtained from any one vendor or contractor or its affiliate equals or exceeds \$100,000 in a twelve-month period. Therefore departments are advised to notify the Inspector General of all evaluation committee meetings.

Once the committee is established and until all business of the committee is officially concluded, all

communications within the committee and between committee members regarding the solicitation and proposals is confidential and may not be communicated to anyone who is not a member of the committee. Any communication between the committee and anyone outside the committee must be conducted by the committee chairperson at the direction of the committee. All such decisions must be documented in the meeting minutes.

Prior to opening the proposals, all members of the committee shall sign the following documents:

- RFP Rules and Code of Ethics
- Certification of Participants in the Selection, Negotiation, or Award of Contract
- Conflict of Interest Affirmation

The chairperson shall collect these signed documents and maintain them in a central contract file. Templates of these three documents are included in **Appendix V**.

The Selection Committee, either on its own or based upon the advice of its technical advisors, shall rate proposals in terms of their technical merit. A rating or scoring worksheet shall be used by the Committee and/or its technical advisors, if any, to score each proposal on each of the technical criteria set forth in the RFP. The Selection Committee and/or its technical advisors shall prepare an evaluation report. The evaluation report shall show the scores assigned to each proposer on each evaluation criterion. It also shall identify which proposals are technically responsive (or are capable of being made responsive) in that they meet specifications.

Technically responsive proposals should be scored and evaluated in comparison to one another and the best proposals should be identified. Price proposals for those highly ranked technical proposals should then be considered. In general, the number of these best qualified proposals should be three, but there may be cases where less or more proposals may be considered. The Committee may decide to consider price only for the proposals receiving the highest-ranking technical evaluations and may eliminate from further consideration lower-ranking technical proposals.

The Committee may choose to request additional information from one or more proposers by submitting written questions for clarification. The Committee also may invite proposers to present their proposals. Presentations provide an opportunity for proposers to explain their offerings and ask questions of the County. This can be particularly useful when the County is procuring goods and services for the first time, when an incumbent vendor has held the County contract for these goods and services for more than five years, or when the anticipated contract award will be for a term of more than five years.

The Selection Committee shall determine which of the remaining proposers has submitted a “reasonable” price proposal based upon the historical price paid for the same or similar services, published price lists, and the County’s estimate of the proposer’s costs. The Selection Committee must record their price evaluations in the Committee’s evaluation report.

The Committee must record in writing on the summary rating sheet the combined rating for each remaining proposer.

After the highest scoring proposals have been identified, the Selection Committee shall determine whether to enter discussions with these proposers or to recommend awarding the contract to the top proposer(s).

Advantages of discussions include:

- Ensuring that proposers understand the County’s requirements

- Maximizing the opportunity to negotiate advantageous contract terms
- Providing an opportunity to obtain the best price

Framework for discussions:

If the Selection Committee elects to hold discussions with the finalists, it should hold such discussions itself, but if there are technical questions that may need to be discussed, the Committee’s technical advisors, if there are any, may also participate.

The Selection Committee should:

- Establish an agenda and schedule for all discussions.
- Notify the Inspector General of all meetings of the Selection Committee for any purpose, both in-person and remote, within one business day after each such meeting is scheduled, via email to [InspectorGeneral@nassaucountyny.gov](mailto:InspectorGeneral@nassaucountyny.gov).
- Accord fair and equal treatment to all finalist proposers with respect to their opportunity for discussion and revision of proposals.
- Resolve any ambiguities or uncertainties in the proposals.
- Keep records of discussions and their results.

The Selection Committee and its advisors may not:

- Give one of the proposers an advantage by providing information about the other proposers’ technical or price proposals.
- Disclose technical information to an individual proposer that will improve its proposal. This does not preclude advising a proposer that it needs to improve its technical proposal by using a phrase like, “sharpen your pencil”. It also does not preclude clarifying any aspects of the specifications that the proposer may have misunderstood.
- Disclose to a proposer what price target it will need to meet to compete successfully. This does not preclude informing a proposer that the County will not consider any bid that exceeds a specified “competitive price range”, so long as all bidders are so informed.

All members of the Selection Committee, whether voting or acting as a facilitator or providing specific expertise, must sign 1) the RFP Rules and Code of Ethics, 2) the Certification of Participants in the Selection, Negotiation, or Award of Contract, and 3) the Conflict of Interest Affirmation (see **Appendix V**). All discussions and communications within the Selection Committee regarding the solicitation are confidential during and following conduct of the solicitation. Sharing any information regarding the conduct of the committee including, but not limited to, any information regarding the proposals under consideration, the composition or proceedings of the committee, and any other related information must not be shared with any individual who has not signed the aforementioned documents. The sole exception to this policy is that the County’s authorized point of contact named in the solicitation may issue addenda, requests for clarification or BAFOs, respond to inquiries, or otherwise communicate outside the committee in a manner that assures that the integrity of the solicitation process is maintained.

If the Selection Committee decides to recommend awarding the contract to one or more of the proposers without soliciting best and final offers from a group of finalists, the Committee still may hold discussions with the winning proposer(s) and attempt to negotiate more favorable terms for the County.

At the conclusion of discussions, the Committee may decide to recommend awarding the contract to one or more of the proposers based on their existing proposals. However, it often will be useful to request some or all the finalist proposers to submit a “best and final offer” (“BAFO”). Generally a BAFO is requested in one of two circumstances: 1) when the committee has established a shortlist of highly qualified, closely competitive proposals, for which a BAFO round may give these proposers the opportunity to enhance their offers and enable the committee establish the most advantageous offer(s); or 2) following selection of the proposed awardee(s) to give the selected vendor(s) the opportunity to enhance their offer(s). A BAFO generally is not issued to all proposers unless there are few competitive proposals and further competition among all proposers is necessary for the committee to determine the proposed awardee(s).

This request shall be made in writing and shall state the deadline for submitting BAFOs and to whom they must be submitted. The notice also shall specify any additional form or content requirements for BAFOs. BAFOs shall be evaluated in the same manner as the original proposals. Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. In certain situations, the Committee may determine that it is appropriate to reopen discussions with a new round of BAFOs, but efforts must be made to avoid multiple rounds.

Selecting other than the lowest price proposer:

If the Committee decides to award the contract to other than the lowest cost proposer, it will have to provide a written justification signed by the chairperson for doing so to the County Executive or DCE designated to oversee the soliciting department.

The justification could include:

- That the winning proposer, while not offering the best aggregate price, did offer the best value in that its price per technical quality point was lower than all other bidders.
- The winning proposer had unique experience or expertise.
- The technical quality of the winning proposal was superior to all other proposals and technical quality is a high priority for the procurement.
- Other special circumstances justified awarding the contract to the recommended proposer, such as the ability of the proposer to meet the time and deliverability requirements of department.

### **Proposal Evaluation Committee Conduct**

The objective of the proposal evaluation committee process is to develop and apply criteria that will ensure that proposals are evaluated objectively, fairly, equally and uniformly and that the County selects the best value solution among the submitted proposals.

Accordingly, the proper conduct of proposal evaluation committees is essential to ensure that all actions taken and decisions made are justified, recorded, and in the best interests of the County. Below are the steps necessary to conduct a proper evaluation committee:

#### **Initial Evaluation Committee Meeting**

Steps to be taken at the initial evaluation committee meeting, in the order to be conducted, include the following:

- a. The purpose and conduct of the solicitation are reviewed. As applicable, this should include

discussion of any Q&A, vendor meetings or communications, site visits, or other elements that may influence the committee's analysis of the procurement.

- b. If not done previously, the list of proposers is distributed. Any proposal deemed nonresponsive is noted.
- c. All members (voting and nonvoting) must read and sign the certification forms required in this policy (see **Appendix V**: Templates of RFP Selection Committee Documents).
- d. If any member is unable or unwilling to provide the required certifications, then the member must recuse him- or herself from serving on the committee.
- e. To ensure that evaluation committee members with prior experience working directly for any vendor that currently does business with the County are sufficiently separated from the prior employer and have no conflict of interest, the following guidelines are to be followed:
  - Evaluation committee members must not have worked directly within the year preceding the publication of any solicitation for any firm that may participate in the solicitation for professional services, including but not limited to engineering, architectural, surveying, accounting, legal, medical, computer programming, consulting, or other such services.
  - Evaluation committee members that were previously employed at a firm responding to the solicitation to be evaluated must not have any form of deferred compensation due from that firm or any ownership interest in that firm. This prohibition excludes interests in any retirement account, 401K, or similarly intended savings account established and funded during the evaluation committee member's former employment with the proposing firm.
  - Evaluation committee members that previously worked directly for a firm that may participate in the solicitation may not have any spouse, parent, child or domestic partner employed as a director, officer, executive, or agent by the former employer.
  - Evaluation committee members that previously worked directly for a firm that is likely to or does participate in a solicitation to be evaluated must not have any other apparent or potential conflict of interest related to the former employer. For example, there could be certain situations where an evaluation committee member has a non-immediate family member who works for or has an ownership interest in a proposing firm which might create an appearance of a conflict. If an evaluation committee member is uncertain if he or she has such a potential conflict of interest, he or she should seek the guidance of the Chief Procurement Officer who will make a prompt determination.
  - If the Department believes it is essential to allow a particular employee who is otherwise ineligible to participate on an evaluation committee due to the above restrictions, the Department may request from the Chief Procurement Officer a waiver of the restrictions with written justification of the circumstances.
- f. Responsive proposals are distributed to all voting members and other members as necessary.
- g. The evaluation tool is distributed and reviewed. Any questions or concerns regarding the tool or the methodology to be applied in the evaluation process must be resolved. This may include discussion regarding the potential need for clarifications, presentations, establishment of a shortlist, Best and Final Offers (BAFOs), or other essential elements of the process.
- h. The anticipated committee schedule and process is reviewed and agreed upon. Any tentative follow-up meeting date(s) should be established. The Inspector General must be notified within 24 hours of the scheduling of any subsequent meeting as stated above.
- i. Draft minutes of the meeting are reviewed by the committee. Meeting minutes at a minimum shall include the date, time, and location of the meeting; the list of attendees; actions taken; decisions made including justifications; any issues that remain open; and next steps to be taken.

Following the meeting, the committee chairperson issues meeting minutes marked as confidential to all members and places a copy in the solicitation file.



## Conduct of the Committee

The subsequent conduct of the committee depends upon several factors, including:

- a. Whether one or more evaluation rounds is anticipated (multiple rounds may be necessary for complex solicitations, or solicitations for which a shortlist and/or BAFO round is necessary)
- b. Whether cost is a ratable factor in a blended evaluation (i.e. cost is rated as a portion of the overall rating), or is to be considered separately (i.e. cost per technical point or award to the highest rated proposer offering a fair and reasonable price)
- c. Whether Q&A and/or presentations shall be necessary
- d. Any other step that may affect the conduct of the evaluation.

The basic conduct of the evaluation process should be defined during the solicitation development, particularly with respect to how cost will be rated in relation to technical factors. However, once a committee has been established it may decide it is necessary to request clarifications or presentations, conduct site visits, or take other steps to fully understand, evaluate, and compare the various proposals as indicated below. For a straightforward proposal evaluation process unaffected by the above complicating factors, the committee members individually review and rate each proposal, and then reconvene to discuss the ratings. Note that, as previously stated, any meeting is subject to the requirement to provide prior notification to the Inspector General. If the committee decides there are no questions that require answers and there is no need to reconsider the individual ratings, then the committee may vote to compile the ratings and identify the proposed awardee(s).

This process may be modified to accommodate the above or other necessary additional considerations in the conduct of the evaluation. The committee has broad latitude to determine what steps are necessary to determine which proposer offers the best value to the County. If the committee believes that clarification is necessary, the committee may issue a written request to a vendor for clarification. The committee may decide that presentations are necessary to understand fully the offers under consideration. The committee may decide to establish a shortlist based upon criteria stated in the solicitation (e.g. a minimum technical score) or by recognition of a “natural break” in scores that the committee determines is appropriate. The committee also may decide to issue requests for Best and Final Offers to all or only the highest-ranked proposers. The committee may select the awardee(s) based upon final average overall ranking, lowest cost per technical point, consensus agreement, or another mechanism that is in accordance with the solicitation and is not arbitrary and capricious. All determinations must be documented and justified as being in the best interests of the County.

## Complicating Factors

Several complicating factors may impact the conduct of the evaluation committee, including but not limited to the following:

**Multi-step evaluation process**—This method is necessary when cost is to be considered after technical proposals have been rated and compared (e.g. cost per technical point, or award to the highest technically ranked proposer offering a fair and reasonable price), or when an initial set of ratings will be used to establish a shortlist of vendors to be interviewed, negotiated with, or asked to submit a BAFO. When using a multi-step process, it is essential to delineate each round of evaluation, prepare and compare a new set of ratings, and establish and record the results of each round based on committee votes or consensus prior to moving to the next step in the evaluation process.

**Evaluating cost**—When cost is one of several ratable factors, the only issue is deciding how various costs shall be compared. Typically, the most advantageous cost receives all possible points offered for that criteria, and higher costs are awarded lower point values in proportionate relation to the amount over the lowest cost. When deviating from this procedure, the DCCO should consult the CPO to determine an appropriate alternative procedure. If cost is evaluated separately following a review of technical ratings (e.g. cost per technical point or award to the highest technically rated proposer offering a fair and reasonable price), cost proposals are not opened until the technical ratings have been determined and the committee is ready to evaluate the cost(s) offered in the context of the technical evaluation results.

**Questions and answers**—Questions to be asked of vendors must be agreed upon by the committee. They may be asked only by the committee chair in writing. Answers also must be received timely in writing. All questions and answers shall be provided confidentially to all members of the committee. The committee then shall convene to review this information and determine next steps (e.g. rerate the proposers, accept the current ratings with no modifications, select the awardee(s), etc.). No determinations regarding ratings or next steps may be made by the committee during a question and answer period until all answers have been timely received and assessed by the committee.

**Tie ratings**—Occasionally, rating ties occur when vendors' offers are deemed by the committee to be equivalent. The best practice in such instances is for the committee to discuss the proposals further to determine if it is possible to agree upon a consensus winner or consider requesting additional information or concessions from the vendors that may allow the committee to make an affirmative selection. Following reconsideration by the committee, it is acceptable to rescore the tied proposals to establish the most advantageous offer. If the committee is unable to break the tie, the vendor with an established presence in Nassau County (e.g. a headquarters or significant base of operations) is to be selected for award. If both vendors or neither vendor has an established presence in Nassau County, a coin toss is to be used to select the awardee. The coin toss must be witnessed by the committee. The basis of the determination breaking the tie must be documented.

Following is a checklist for conducting the evaluation committee process. The form may be modified as necessary for the specific process to be employed.

## Proposal Evaluation Committee Checklist

Solicitation Title: \_\_\_\_\_

Department: \_\_\_\_\_

Proposal Due Date: \_\_\_\_\_

Prepared By: \_\_\_\_\_

Committee Members:

Name	Department	Title	Voting Member?

Date/Time/Location of Initial Committee Meeting:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Committee Chairperson:

\_\_\_\_\_

Required Steps:

\_\_\_\_\_ Committee members (including chairperson) selected and notified; voting status of each member designated in writing

\_\_\_\_\_ Evaluation tool finalized (the evaluation tool should be drafted while developing the solicitation, or no later than the proposal due date)

\_\_\_\_\_ Technical proposals have been reviewed for responsiveness by the chairperson

\_\_\_\_\_ Initial Evaluation Committee meeting held

\_\_\_\_\_ Purpose and conduct of the solicitation are reviewed by chairperson

\_\_\_\_\_ The list of proposers is distributed (nonresponsive proposers are indicated)

\_\_\_\_\_ All members (voting and nonvoting) must read and sign the three required certification forms

- Note: Any committee member that refuses to submit the signed certifications must recuse him- or herself from the committee.

\_\_\_\_\_ Responsive proposals are distributed by chairperson to all voting members and to nonvoting members as necessary

- Note: For cost per technical point and other methods that require an initial review of only non-cost factors, only the technical proposals are distributed at this time

\_\_\_\_\_ Evaluation tool is distributed by chairperson and reviewed

\_\_\_\_\_ The method of evaluation is reviewed

\_\_\_\_\_ The anticipated committee schedule is agreed to

\_\_\_\_\_ Draft meeting minutes are reviewed and agreed upon

\_\_\_\_\_ Confidential meeting minutes are distributed by chairperson to all committee members

\_\_\_\_\_ Members review and rate the proposals individually

\_\_\_\_\_ The committee reconvenes to compare ratings, discuss any questions and concerns, and determine next steps (e.g. establishing a shortlist, submitting questions to vendors, inviting vendors to make presentations, requesting Best and Final Offers (BAFOs), selecting the proposed awardee(s), etc.)

\_\_\_\_\_ Confidential meeting minutes are distributed by chairperson to all committee members

Note: The previous two steps are reiterated until the committee proposes any and all award(s) or decides to make no award for the solicitation.

All communications within and regarding the committee are confidential. All communications to vendors or others not participating in the committee may be provided in writing only by the committee chairperson at the direction of the committee.

## **Evaluation of Proposals**

The most common evaluation process incorporates each of the following steps:

Each Selection Committee member (and/or voting technical advisors, if any) shall complete a Rating Sheet evaluating each proposal on its technical merit with explanation as needed, and shall print and sign his/her name and date of signature on the sheet.

The ratings of the Committee members shall be aggregated and an Evaluation Summary report comparing the respective technical merit of the proposals shall be prepared and signed by the chairperson and dated.

The Committee may elect to do price evaluations only for the three proposals with the highest technical scores or may elect to do price evaluations more broadly as indicated in the solicitation; possible alternatives include minimum technical score cutoff or natural break in scores.

The Committee shall then identify each of the remaining proposals that have reasonable price offers based upon the County's cost estimate or other relevant criteria.

The Committee shall then record a total rating for each of the remaining proposals based on a combination of price and technical criteria.

At any time in the evaluation process following initial technical scoring, the Committee may choose to discuss the members' individual ratings to determine if consensus among the Committee is possible. If consensus is reached, the consensus score is presented as the summary score. If consensus is not reached, the Committee may choose to re-evaluate the individual ratings following group discussion.

Alternative approaches to proposal evaluation may be used, including cost per technical point and other methods, when included in the solicitation and with the written approval of the CPO.

Evaluation Criteria – Factors that may be used to evaluate proposals and the relative weight that will be assigned to the respective criteria include but are not limited to:

- Price
- Technical quality
- Management capability
- Personnel qualifications
- Prior experience
- Past performance
- Ability to comply with the department's schedule

Award may be made by ranking price per technical point or by ranking ratings that include price as a factor. For construction-related professional services and certain other professional services, award may be made to the highest technically ranked proposal for which the County can obtain a fair and reasonable price.

## **Deciding Whether To Have Further Discussions Or Make An Award**

After the Selection Committee has completed its evaluations, it must decide whether to make an award to the highest rated proposer(s) or to continue discussions with a group of finalists in accordance with the process that had been established at the inception of the Committee. If the Committee decides to hold discussions, it should:

- Establish an agenda and schedule for all discussions.
- Accord fair and equal treatment to all finalist proposers with respect to their opportunity for discussion and revision of proposals.
- Resolve any ambiguities or uncertainties in the proposals.
- Keep records of discussions and their results.

After holding discussions, the Selection Committee must decide whether it wants to recommend awarding the contract to one or more of the proposers based on its (their) existing proposal(s) or to solicit a Best and Final Offer ("BAFO") from each of the finalists. The Committee must solicit the BAFOs by written notice to each of the finalists. The notice should specify the form requirements for the BAFO, the content requirements for the BAFO, the due date, and the person to whom the BAFO is to be submitted (the Committee chairperson).

The procedure for evaluating BAFOs is the same procedure as is used for evaluating the original proposals:

- The Selection Committee members individually complete the rating sheets for technical merit with explanation and their scores are then aggregated.
- The individual members rate the price proposals and their scores are then aggregated.
- The technical ratings and price ratings are then combined.
- At any time in the evaluation process following initial technical scoring, the Committee may choose to discuss the members' individual ratings to determine if consensus among the Committee is possible. If consensus is reached, the consensus score is presented as the summary score. If consensus is not reached, the Committee may choose to re-evaluate the individual ratings following group discussion.
- The Selection Committee then must decide whether it is satisfied with the highest ranked proposal and wants to recommend awarding the contract to that proposer, or whether it wants to either have further discussions with the proposers or to cancel the RFP. In general, multiple rounds of BAFOs should be avoided.

### **Deciding To Make An Award**

Where the Selection Committee decides to recommend awarding a contract to the highest rated proposer, it must provide the following information:

- A list of all the proposals received
- The prices proposed in the respective offers
- The overall rating of each proposal
- The Committee's recommendation of who should be awarded the contract
- The justification for the recommendation
- If the award is not to the lowest cost proposer, the justification must explain why awarding the contract to the recommended vendor best serves the County's interests (e.g., the winning proposal gives the County the best value in terms of technical quality per dollar paid; the winning proposer has unique experience;

the technical quality of the winning proposer was far superior to others and such technical quality is a high priority that justifies the additional cost; the ability of the winner to meet special time and deliverability requirements).

- If less than three proposals were obtained by the County, the Committee must explain why more proposals could not be obtained.
- A completed Responsibility Determination.
- A completed Recommendation For Award.

If the DCE and the CPO approve the Committee's recommendation, the Committee shall notify the winning proposer in writing of the County's intent to award it the contract and then commence contract negotiations with the winner. The County shall notify the other remaining proposers of the County's decision. The Committee may ask the other proposers to hold their offers open for a stated period of time not to exceed 180 days in case the County's contract negotiation with the winning proposer does not conclude successfully.

### **Purchases of Technology and Services**

Sometimes, a purchase of equipment may also involve the purchase of expert services to design the equipment. As set forth in 1988 Op. State Compt. No. 88-35, such a purchase contract will be considered one for services if:

- the services component is the primary or predominant part of the acquisition, and
- there is “inextricable integration” of the services and “physical components”. For example, purchase of computer hardware and software may fall under this exception depending on:
  - the amount of time and effort involved in tailoring the prepackaged hardware or software;
  - the degree of customizing necessary;
  - the amount of time and effort involved in any personnel training services provided by the vendor; and
  - the relative cost of the prepackaged hardware or software and services.

Although an RFP may be used under the above-described conditions, in any mixed purchase, a department may elect instead to use formal sealed bidding for the equipment portion or for the entire procurement.

Any questions regarding whether a particular contract qualifies as a “personal services contract” should be directed to the County Attorney and the CPO.

#### **Pre-deadline discussions with Proposers:**

Parties that intend to respond to the RFP shall address any questions regarding the meaning of provisions of the RFP only to the person designated in the RFP as the department’s contact person. The department may hold a pre-proposal conference at which it addresses questions regarding the RFP.

Except at the pre-proposal conference, all questions must be in writing to the authorized point of contact and will be answered, if appropriate, as promptly as is practical. The department may set a deadline for accepting written questions. If the answer to a question requires a clarification of the RFP, such clarification will be sent to all parties known to have requested the RFP.

#### **Pre-deadline handling of proposals:**

A proposer may withdraw or modify a proposal at any time prior to the deadline for submitting proposals by submitting a written notice to the soliciting department. The department shall return any security bond or

deposit to a proposer that withdraws its bid prior to the deadline and shall retain all documents relating to the withdrawn proposal for its records.

#### Post-deadline handling of proposals:

Proposals submitted after the published deadline shall not be accepted, but the deadline for submitting proposals may be extended by an amendment to the RFP made in accordance with this Policy/Procedure. Proposals are not required to be opened in public but shall be either date and time-stamped or opened in the presence of two or more County employees. The names and addresses for all parties that request an RFP shall be recorded in the Response Summary on the Request to Initiate Form. Prior to evaluation, all proposals should be reviewed for completeness and compliance with the form and content requirements of the RFP. However, the Committee may waive certain irregularities, such as minor deviations from form requirements.

#### Post-deadline modification of proposals:

After the deadline for submitting proposals, but prior to the time for submitting a revised offer or BAFO, if the County has decided to enter into discussions with a proposer, the proposer may correct mistakes in its proposal. In addition, a proposer always may modify its proposal when requested to do so by the County.

#### Sufficiency of number of proposals:

The soliciting department shall eliminate proposals from any individuals or entities that are not responsive. The soliciting department must then determine whether it has received a sufficient number of proposals to ensure that the procurement process is competitive. If the department receives less than three such proposals, when it makes a contract award recommendation, it will have to justify in writing as part of the Recommendation For Award why it was not possible to attract more qualified proposers, and why the selection of the winning proposal is justified given the low level of competition. This shall include a single or low vendor response analysis when only one or two responses are received as required under Section III(G)(7) of this policy.

#### Multiple award task order contracts:

Multiple award task order contracts for services may be awarded upon a determination by the DCCO with the approval of the CPO that it is in the best interest of the County to award multiple contracts for services to multiple contractors and to allocate work among such contractors through a task order system. The criteria to be considered by the DCCO in making such determination may include the following: the nature of the services to be procured; the expected frequency of task order issuance; the capacity of vendors to provide all of the required services within the required timeframes; and the potential advantage of multiple contracts (e.g., more favorable terms; more competitive pricing, etc.).

Multiple awards may be made for contracts for goods or services, pursuant to requests for proposals, in conjunction with the procedures prescribed in this subdivision. Such request for proposals, and the subsequent contracts, shall state the procedures and criteria to be used in selecting the vendor to perform on an individual task order for services or purchase order for goods.

For services other than standard services, such procedures and criteria shall provide that each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the services, unless an alternative method of assigning task orders, as set forth below, is determined by the CPO to be in the County's best interest and is set forth in the request for proposals and the contract. In the event that such alternative method is used, each selected vendor shall receive notice of assignment of each task order, regardless of whether each selected vendor received the solicitation for the task order.

For goods and standard services, the agency may:



- select the vendor that represents the best value to the County for that particular task order or purchase order based on each vendor's contract with the approval of the CPO, or
- solicit offers for each task order or purchase order from all awarded vendors and award to the vendor offering the lowest price; if the agency solicits offers for each task order or purchase order, each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the services or goods.

The agency may set forth an alternative method of assigning task orders or purchase orders if it is determined by the CPO to be in the County's best interest and is set forth in the request for proposals and the contract. In the event that such alternative method is used for standard services, each vendor with a contract shall receive notice of assignment of each task order at the time each task order is issued, regardless of whether each vendor with a contract received the solicitation for the task order.

The following list constitutes acceptable alternative methods of assigning task orders:

- rotation, or other non-discretionary method of assignment, including where assignment pursuant to such method may be varied based on stated criteria (e.g., capacity or past performance);
- assignment to a particular vendor based on the agency's need to distribute task orders among vendors; and
- any other method approved by the CPO as set forth in the RFP.

In the event that a vendor selected pursuant to one of the selection methods in paragraphs above is unable to perform the services on an individual task order or provide the goods to be purchased pursuant to an individual purchase order for reasons such as lack of capacity or conflict of interest, the agency may disqualify that vendor for purposes of that task order and select another vendor with approval of the CPO.

Each vendor shall be required to respond to every solicitation for an individual task order or purchase order for which it is solicited. The DCCO may determine that a vendor is in default if it fails to bid without an adequate explanation for such failure.

Price shall be among the criteria considered in making individual vendor selection decisions, and no task order shall be issued unless the DCCO determines that the proposed price is fair and reasonable. Prices set forth in a multiple award contract shall represent maximum prices that may be set forth in individual task orders issued to that vendor.

Unless otherwise approved by the CPO, contracts awarded pursuant to this section shall have an initial term of not more than five years. This limit excludes renewal terms of up to two years total. Task orders or purchase orders may extend beyond the expiration of the contract term, in which event the terms and conditions of the contract shall continue to apply to the task order until its termination or expiration. Task orders or purchase orders shall have a maximum term of five years or, if issued for a specific project, until the specific project is completed. Notwithstanding the above, a task order or purchase order may be extended beyond or further extended beyond the expiration of the contract term, or beyond the expiration of the task order or purchase order, with approval by the CPO.

### **Contract Preparation**

For personal services contracts, the department shall use the model personal services contract template issued by the County Attorney. If the department wants to include language in the contract that differs from the template it must first consult with and obtain the approval of the County Attorney's Office with notice provided to the CPO.

### **Contract Approval**

Generally, all personal services contracts are subject to approval by the Department Head, OMB, the County Attorney, DPW (for capital contracts), Legislative Affairs, the CPO, the DCEC, the Vertical DCE overseeing the department, the Legislature (over \$1,000), the Comptroller, and NIFA (equal to or greater than \$50,000 and when required by the Comptroller).

### **Legislative Approval**

The Rules Committee of the County Legislature must approve personal service contracts that exceed \$1,000 or are for a term of more than one year. This requirement applies equally if the personal services are procured by a means other than RFP, including procurement by formal sealed bidding.

This requirement does not apply in certain limited circumstances, including:

- Contracts for services of expert witnesses for use in, or in anticipation of, a specific adjudicatory proceeding or litigation.
- Contracts for services of attorneys to provide legal counsel to the County Executive or the Presiding Officer of the Legislature in any case in which either is named as a defendant or respondent or to provide either with specialized legal counsel in “certain sensitive governmental areas” requiring outside counsel.
- Certain contracts involving the expenditure of federal or State aid where federal or State law or regulations require otherwise.
- Contracts to provide services to public assistance recipients or senior citizens.
- Contracts for solid waste management, collection and disposal.
- Contracts for services performed and articles manufactured in correctional facilities.
- Purchase orders for services under previously adopted blanket resolutions of the Legislature.
- Purchases through the State Office of General Services.

## **Appendix K: Streamlined Competitive Proposal Process**

### **WHEN MAY THE STREAMLINED PROCESS BE USED?**

The streamlined process is appropriate when procuring personal services under the formal RFP process would be impractical or inefficient. This may include, but is not limited to, the following circumstances:

- There is a very “time-sensitive” situation where a service provider must be retained quickly, but declaration of emergency is not justified.
- There is a need to procure legal services or consulting services in support of current or anticipated litigation, investigative or confidential services.
- The contract is let by a department in health and human services and is for the purpose of delivering client services.
- The anticipated response from responders is not technical in nature.
- The cost of the services that the department seeks to procure does not exceed \$100,000.

While the presence of any of these factors can weigh in favor of a streamlined process, the absence of a factor does not count against using the process.

### **EXAMPLES OF “TIME-SENSITIVE” SITUATIONS**

Examples of “time-sensitive” situations where the streamline process may be appropriate include:

- The department needs to respond to a court order, stipulation or consent decree.
- Funds available from a source outside the County will be lost to the County.
- An existing service provider has been terminated, has defaulted, has withdrawn from, or has repudiated a contract, or has otherwise become unavailable, or the department has decided not to renew or extend an existing contract in the best interests of the County, and the department requires an immediate substitute or successor provider.
- A compelling need for services exists that cannot be timely met through the RFP process including but not limited to public advertising requirements.

Depending upon the severity of the situation, any of these circumstances could also constitute an emergency that qualified for procurement under the “emergency” procurement procedure set forth below.

### **INITIATION OF STREAMLINED PROCESS**

Before commencing a streamlined competitive procurement of personal services, all departments, except the County Attorney’s Office, must prepare a Request to Initiate and have it approved by the department head and the Vertical’s DCE, and the Chief Procurement Officer.

### **SOLICITATION OF PROPOSALS**

In general, a department using this method should seek proposals from all eligible vendors registered with the County and, at the discretion of the County, any other vendors with the capacity to perform the work. A minimum of three qualified vendors should be solicited, unless the department can demonstrate that fewer than three qualified vendors are available to provide the services sought.

Notice of the solicitation shall be published in the official newspaper of the County or another appropriate trade journal, website, or other service likely to reach potential vendors of the required services. In addition, notice shall be published by through the Department of Information Technology.

With the approval of the CPO, solicitations may be exempted from the requirement to post the solicitation.

The department shall issue written instructions to the solicited firms which set forth:

- The required form and contents of proposals.
- The deadline for submitting proposals.
- A description of the nature and scope of the personal services sought by the department.
- The criteria that will be used to evaluate proposals.

#### ESTABLISHMENT OF SELECTION COMMITTEE

- In general, proposals should be evaluated by a Selection Committee. The department head or designee shall designate as members of this committee employees of the department who have appropriate expertise, skills and experience.

#### EVALUATION OF PROPOSALS

- Similar to the RFP process, proposals shall be evaluated in terms of their quality and price, and other relevant factors.
- The ability of firms to meet the timing and deliverability requirements of the department also shall be considered.
- The Selection Committee or Evaluator shall score each proposal and maintain a written record of the results of such scoring.
- The Selection Committee or Evaluator shall combine the technical and price evaluations and determine which firm provides the best value to the County, within the budget constraint of the County.

#### POST-EVALUATION PROCESS

- The same post-evaluation process as applies to RFP proposals also applies to streamlined proposals. The Committee or Evaluator must determine whether or not to engage in discussions with proposers and/or to request “best and final offers”.
- The same rules regarding the holding of discussions and solicitation of best and final offers apply to the streamlined process.
- The department must also provide to its vertical’s DCE a written justification for recommending award of the contract to other than the lowest cost proposer.

#### CONTRACT PREPARATION AND APPROVAL

The same requirements and approvals as are required for personal services contracts formed pursuant to the RFP process apply to personal services contracts formed pursuant to the streamlined process.

## **Appendix L: DPW's Competitive Processes for Construction, Architectural, Engineering, and Surveying Services**

### **CONSTRUCTION**

#### **INITIATION AND PROCESSING OF CONSTRUCTION CONTRACTS**

- Construction contracts are initiated when the Commissioner of DPW or their designee sends a Request to Initiate Form to the DCE overseeing DPW. As with RFPs, the Vertical DCE and the Chief Procurement Officer must approve the Request to Initiate before DPW proceeds with the procurement.
- The Commissioner or their designee then follows the same steps that the Director of Purchasing would follow for other formal sealed bids. That is, the Commissioner prepares a Notice to Bid (analogous to the Invitation to Bid prepared by the Office of Purchasing) which includes adequately detailed specifications and has the Notice published in Newsday or another official newspaper of the County. The Notice also may be published in a relevant trade journal. Following publication of the Notice and at least five days prior to the date that bids will be opened, DPW shall have the plans and specifications available for review and inspection at the DPW Office of Purchase and Contracts. DPW also sends the notice to the Office of Purchasing which forwards it to Department of Information Technology for posting on the County web site.
- Like the Blanket Purchase Contracts that the Office of Purchasing has with vendors of various goods and services, DPW has Requirements Contracts with various contractors. DPW utilizes these contractors during the year to handle various smaller repair and maintenance jobs.
- The provisions regarding the handling, modification, cancellation and evaluation of bids set forth above for other formal sealed bids handled by the Office of Purchasing apply equally to competitive sealed bids for construction contracts handled by DPW.
- After a winning bidder is selected, construction contracts are subject to the same approval path as other competitively bid contracts that are executed by the County Executive or a designated DCE.

#### **WICKS LAW**

Under the Wicks Law (Gen. Mun. Law §101), when the County contracts for the construction, reconstruction or alteration of buildings with an entire cost of more than \$1,500,000, the County, in addition to awarding a contract to a general contractor if it wants one, also must separately bid and award contracts for:

- Plumbing and gas fitting;
- Steam heating, hot water heating, ventilating and air conditioning (“HVAC”); and
- Electric wiring.

The Wicks Law does not apply to construction contracts procured under emergency circumstances where formal sealed bidding is not required, nor does the Wicks Law apply to any contract when a political subdivision has chosen to require a project labor agreement pursuant to Labor Law Section 222 (2) (a).

#### **SPECIAL PREVAILING WAGE PROVISION**

For public works contracts, the Invitation to Bid must include a notice that the contract award is subject to applicable provisions of the New York State Labor Law regarding the payment of prevailing wages and

supplements to laborers, workers and mechanics, and that proposers shall be required to submit with their proposals a completed “Request for Wage and Supplement Information” form.

#### APPRENTICESHIP

The County requires any contractor, prior to entering into a construction contract with the County with a value in excess of \$500,000, to have apprenticeship agreements for the type and scope of work to be performed, which have been registered with and approved by the New York State Commissioner of Labor.

#### CHANGE ORDERS

All changes to existing contracts shall be approved by the Commissioner of DPW, the DCCO, or their designee and shall be reflected in a change order, which, once authorized shall become a part of the original contract. A copy of the change order shall be sent to the contractor within 10 days after authorization of the change.

DPW may include in any Notice to Bid a provision for determining the cost of expected changes so that these costs can be competitively determined before award.

Changes may include any one or more of the following:

- Specification changes to account for design errors or omissions;
- Changes in contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. All changes that cumulatively exceed ten percent of the original contract amount shall be approved by the Vertical DCE and the CPO;
- Extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract;
- Changes in delivery location; and
- Changes in shipment method.

Changes are permitted only for work necessary to complete the work included in the original scope of the contract and for non-material changes to the scope of the contract. Changes are not permitted for material alterations in the scope of work or for the insertion of a renewal clause to the contract. Material alterations to the scope of the work may be made only by a new procurement.

For each procurement, DPW shall maintain a log of all executed change orders that shall include:

- the name of the contractor and the original contract amount;
- the reason(s) for and the dollar amount of the change order; and
- a running total of the value of the changes and the resulting revised contract amount

#### POST-SELECTION APPROVAL PROCESS

The same requirements and approvals as are required for formal sealed bids apply to construction contracts solicited by formal bid.

## **ARCHITECTECTURAL, ENGINEERING AND SURVEYING SERVICES**

### **INITIATION OF ARCHITECTURAL, ENGINEERING AND SURVEYING CONTRACTS**

As with other personal services contracts, DPW must first submit a Request to Initiate and have it approved and signed by the Vertical DCE overseeing DPW and the Chief Procurement Officer.

### **DOCUMENTATION**

The document requirements for DPW personal services solicitations are the same as for Requests For Proposals.

### **PROCUREMENTS OF \$50,000 OR UNDER**

DPW has compiled Pre-Qualified Vendors Lists (PQL) from architectural, engineering and surveying firms that have submitted a form to it known as the “Statement of Qualifications and Performance Data.” Any PQL must be approved by the CPO.

For procurements of \$50,000 or under, DPW solicits proposals from all no less than three firms on the relevant PQL. Vendor List.

### **PROCUREMENTS OVER \$50,000**

RFPs for over \$50,000 worth of services shall have the same form, content and public notice requirements as are applicable to RFPs for other personal services contracts.

### **HANDLING OF PROPOSALS AND DISCUSSIONS WITH PROPOSERS**

- The same guidelines that apply to streamlined proposals apply to proposals of up to \$50,000 worth of architectural, engineering and surveying services.
- The same guidelines that apply to other RFP proposals apply to RFPs for architectural, engineering, and surveying services.

### **ESTABLISHMENT OF SELECTION COMMITTEE AND EVALUATION PROCESS**

- The same guidelines that apply to the establishment of a selection committee for other personal services contracts apply to procurements of architectural, engineering and surveying services.
- The same guidelines that apply to the evaluation process for other personal services contracts apply to procurements of architectural, engineering and surveying services by, except as described below.

### **SPECIAL EVALUATION CRITERIA**

Pursuant to Resolution 928 of 1993, the following criteria must be applied to evaluate architectural, engineering or surveying services technical proposals:

- the magnitude, scope and complexity of the services to be rendered;
- the experience of the firm in assignments of similar size, scope and complexity;
- the size, staffing, resources, and financial capability of the firm vs. the size of the assignment;
- the knowledge and experience with the Nassau County facilities and programs involved in the assignment;
- the past performance with the department and for other public entities;
- the time constraints and deliverability of services; and

- the firm’s workload with the department.

The Selection Committee also may apply any other criteria that it reasonably deems to be relevant.

#### MINIMUM OF THREE TECHNICALLY QUALIFIED FIRMS

DPW shall make its best effort to obtain proposals from a minimum of three technically qualified firms. If DPW does not obtain bids from at least three qualified firms, DPW shall prepare a memorandum explaining why less than three qualified proposals were obtained subject to Vertical DCE and CPO approval which shall be attached to the Comptroller’s Approval form.

#### NEGOTIATION WITH FIRMS

The Selection Committee shall initiate negotiations with the firm determined to be most highly qualified to provide the needed services.

The Selection Committee shall negotiate with the firm to provide such services at a compensation which the Committee determines in writing in the procurement file to be fair and reasonable to the County based upon the estimated value of the services to be rendered and the scope and complexity of the project.

If a satisfactory, fair and reasonable agreement cannot be negotiated with the firm considered the most qualified, then the Selection Committee shall terminate negotiations with that firm and similarly negotiate with the second most qualified firm.

Failing accord with the second most qualified firm, negotiations shall terminate with it and then be undertaken with the third most qualified firm and this process shall continue until a satisfactory, fair and reasonable contract has been negotiated.

The procurement may be terminated if the Selection Committee determines that no satisfactory, fair and reasonable contract can be negotiated with any available vendor or if the Committee determines for any other reason that it is in the County’s interest to terminate the process.

#### POST-SELECTION APPROVAL PROCESS

The same post-selection approval process that applies to other personal services contracts applies to contracts for architectural, engineering or surveying services.

#### TASK ORDER AND WORK ORDER AWARDS

All task orders and work orders assigned to multiple award contracts shall be competitively solicited through mini-bids or mini-proposals as applicable unless approved to be awarded noncompetitively by the Vertical DCE and the Chief Procurement Officer.

#### CONTRACT CLOSE-OUT ASSESSMENT

Within 30 days of the final completion or expiration of any capital contract of value in excess of \$50,000.00, DPW shall prepare an analysis of the performance of the contract as described in **Appendix M**.

#### ANNUAL DPW PROCUREMENT ASSESSMENT

Annually by July 31 DPW shall submit to the Vertical DCE, the DCEC, CPO, and the Comptroller’s Office an analysis of the performance of all contracts requiring a close-out analysis during the preceding 12-month period ending June 30 as described in **Appendix N**.

#### TRANSPARENCY MEASURES



To ensure sufficient transparency in the County's capital contracting actions, the Department shall publish online the following documents:

- Bid Tabulations
- RFA Justifications for all competitive proposals
- Mini-bid and mini-proposal results
- List of Task Order/Work Order awards
- List of Change Orders and Amendments
- Annual DPW Procurement Assessment

#### NIFA NOTIFICATION OF CONTRACT MODIFICATIONS

The Department of Public Works shall notify NIFA in writing upon approval of any contract modification that will result in a contract amendment.

## **Appendix M: DPW Contract Close-Out Assessment**

For every contract with a final cost of \$50,000.00 or more, within 30 days of final completion of the contract DPW shall prepare and submit to the Vertical Deputy County Executive and the CPO a contract close-out assessment. The analysis shall include and address at a minimum the following information:

- Contract ID
- NIFS ID
- Title/Description
- Vendor Name
- Vendor EIN
- Solicitation Method
- Initial Contract Estimate
- Initial Contract Amount
- % Variance between the Initial Contract Estimate and the Initial Contract Amount
- Final Contract Amount
- Total Amounts Expended (liquidated and unliquidated)
- % Change in Contract Amount
- Overall vendor performance ratings (1-5, 5 being best)
  - Quality of work
  - Timeliness of work
  - Responsiveness to County Issues
  - Overall rating
- List of change orders
- List of contract modifications
- External factors affecting the contract performance
- Lessons learned, and corrective actions planned

All annual vendor performance ratings are to be attached to the contract close-out analysis.

## Appendix N: DPW Annual Procurement Assessment

No later than July 31 on an annual basis, DPW shall prepare an annual procurement assessment reviewing all contracts completed during the prior July through June. The annual DPW procurement assessment shall be based upon the individual contract close-out assessments completed for the period, and include and address at a minimum the following information:

- By solicitation method during the period
  - Number of solicitations, total estimated amount
  - Number of cancelled solicitations and total estimated amount
  - Number of solicitations awarded, total estimated amount, total initial awarded amount, and average percentage variance and range between the estimated and initial awards
- Retroactivity analysis
  - Percent retroactive (term start prior to execution date) by category of work
  - Most retroactive contracts and reasons for retroactivity
  - Trend analysis
- Cycle Time analysis
  - Procurement
  - Contract Completion / % On Time
- Contract Cost by category of work
  - Total
  - Change Orders
  - Overruns
  - Largest cost increases (dollars/percentages) and reasons
  - Trend analysis
- Time Extensions
  - Percent of contracts requiring time extensions
  - Greatest extensions of time
  - Trend analysis
- Vendor Performance
  - Top/worst performers and reasons
- Analysis of contract performance
  - Most successful
    - On or below budget

- On time or early
- Factors promoting success
- Least successful
  - Most over budget
  - Most delayed
  - Factors promoting failure
- Issues identified
- Lessons learned, best practices identified, and proposed corrective actions / initiatives

## **Appendix O: Emergency Procurements**

### **Emergency Purchases of Goods and Non-Personal Services**

Pursuant to section 702 of the County Charter, the County Executive, upon the written recommendation of the Director of Purchasing (or their designee), may authorize the Director of Purchasing (or their designee) to let contracts for the purchase of supplies, material, equipment or services in connection with the operation, renovation or maintenance of County facilities or equipment without any competitive process when immediate action is required due to an accident or unforeseen occurrence or condition affecting:

- public buildings;
- public property or
- the life, health, safety or property of the inhabitants of the County
- essential County services

The authorization must be in writing unless the nature of the emergency prevents a writing from being obtained.

Such purchases may be only for such amount and term as is necessary to remediate the emergency, as determined by the Director of Purchasing or their designee.

Pursuant to section 2206 of the County Charter, when the County Executive issues a declaration of an emergency that sets forth the nature of the emergency, goods and non-personal services, including construction and public works contracts, covered under that section may be procured directly without formal sealed bidding. In addition, emergency contracts require presolicitation approval by the CPO to ensure adequate competitiveness when the emergency contract is issued without formal federal, state, or local declaration of a state of emergency.

All emergency purchases of goods and non-personal services must at a minimum be approved by OMB, the CPO, the Vertical DCE, and the Comptroller. Contracts for purchases of goods and non-personal services that must be executed by the County Executive or a designated DCE are additionally subject to approval by the County Attorney.

### **Legislative Ratification of Emergency Purchases of Goods and Non-Personal Services**

Emergency purchases of \$100,000 or more must be ratified by a resolution of the Legislature at its next available meeting. Without such a resolution, any emergency purchase must be limited to a term of one year and to an expenditure of \$100,000 plus any funds expended to remediate the emergency prior to the Legislative Meeting at which there was a vote upon the ratifying resolution.

### **Emergency Purchases of Personal Services**

When the County Executive declares that there is an emergency that requires the immediate procurement of personal services, the County Executive may enter into a personal services contract without soliciting competing proposals.

Contracts by the County Executive to purchase emergency personal services must at a minimum be approved by OMB, the County Attorney, the CPO, the DCEC, the Vertical DCE, and the Comptroller, with notice to the Inspector General.

### **Legislative Approval of Emergency Purchases of Personal Services**

Rules Committee approval is required for emergency purchases of personal services in the same cases where it is required for non-emergency purchases, however in an emergency where there is a threat to of Nassau County residents' or employees' health or safety, the Rules Committee will be deemed to have approved a personal services contract with a person or firm whose aggregate amount of expenditure receipts from the County exceeds \$10,000 for a term of one year if the Legislature does not convene a meeting to act on the proposed contract within 12 hours of notice being given to the Chair of the Rules Committee or the Clerk or Presiding Officer of the Legislature.

In the event of an emergency that does not threaten the health or safety of Nassau County residents or employees, failure of the Rules Committee to convene within 72 hours of the actual notice to consider is deemed an approval.

## **Emergency Procurement Justification and Procedure**

Per NYS GML §103 and the Countywide Procurement & Compliance Policy (the "Procurement Policy"), the County is required to ensure that emergency contracts are awarded in the best interests of the County with maximum practicable competition, and that such awards are made only to vendors that are responsible to the extent vendor responsibility may be established during the emergency. This policy is issued to ensure that all emergency procurements conducted in response to the any declared emergency are conducted in a manner consistent with the law and policy that is transparent, fair, and open.

To ensure that emergency procurements processed in response to a declared emergency are conducted in a manner consistent with the applicable law and Procurement Policy, this policy establishes the procedure to initiate and conduct an emergency procurement in response to a declared emergency.

## **Emergency Procurement Procedure**

Upon identification of a need for a specific emergency procurement, in addition to complying with the emergency procurement procedures set forth in the Procurement Policy, the DCCO or delegate shall submit to the Chief Procurement Officer or their designee ("CPO") a justification for the procurement including:

- 1) The scope of goods/services required
- 2) The purpose of the need and its relation to the emergency condition
- 3) A breakdown of the estimated cost(s) with explanation to the extent feasible
- 4) The intended method of award (e.g. competition, sole source, OGS contract, etc.)
  - a. If competitive, the list of vendors the department intends to solicit an offer from, and the duration of the competition.
  - b. If noncompetitive, the justification for not conducting any competition.

For procurements that are under the jurisdiction of the Department of Shared Services, notice shall be simultaneously submitted to the Department of Shared Services. The CPO will review the request, and upon acceptance of the request, advise the department that the procurement may be conducted, with copies of the approval provided to the Office of Management and Budget and the Comptroller's Office, as well as the Department of Shared Services if applicable.

Following conduct of the solicitation and preliminary selection of the awardee(s), the department shall make a preliminary determination of responsibility based on information immediately available prior to making any award. Any Material Adverse Information that is identified in this preliminary review shall be submitted to the CPO for review. Upon final selection of the awardee(s), the department shall prepare and submit a

Responsibility Determination and Recommendation For Award as necessary and as may be required in the Procurement Policy.

Departments are to keep a list of all emergency procurements processed, and each procurement file must be maintained with all relevant communications and conduct of the solicitation and award. Departments are to notify the Inspector General promptly when an emergency contract has been awarded.

In extraordinary circumstances, the CPO may waive any of the requirements provided under this policy with notice and justification submitted to the Inspector General.

## **Appendix P: Sole Source**

A sole source for specified goods and/or services is the only source that can supply the goods and/or services to the County. A vendor may be a sole source due to proprietary technology, knowledge, or capacity to perform the required scope of work. In certain circumstances when more than one source theoretically can perform the scope of work, but only one source for all intents and purposes is available to do so, the solicitation may be deemed a sole source by the DCCO. A sole source procurement requires a letter from the vendor justifying itself as a sole source (or in the latter circumstance above explaining the vendor's capacity to perform the scope of work, including any proprietary technology and/or knowledge), and also a memorandum from the DCCO to the CPO justifying the need for the sole source procurement.

### **WHEN SOLE SOURCE PROCUREMENT MAY BE USED**

Before using sole source procurement, the Director of Purchasing (for purchases made by the Office of Purchasing) or the head of the procuring department (for other purchases) must determine in writing as part of the Presolicitation Review that:

- there is only one source for a particular good or service that has sufficient experience, skill or knowledge to deliver the goods or services required by the County in the timely manner, provided, however, that a vendor's unique qualification may not be based solely on its having a continuing or historic relationship with the County in providing the solicited service or a related service;
- there are no other goods or services that provide the equivalent or similar benefits; and
- the cost of the goods or services are reasonable in light of the benefits.

This writing must be approved by the Vertical DCE and the CPO.

Prior to using a sole source procurement, best efforts shall be made to verify that the County's needs cannot be met by an alternative product or service that may be available from other vendors, including but not limited to issuing public Notice of Intent to enter into a sole source agreement and documented market research. As part of the pre-solicitation review, sole source procurements are subject to further approval by the CPO to ensure adequate notice and evaluation of the market prior to preparing the sole source contract.

### **APPROVAL OF SOLE SOURCE CONTRACTS**

A Request to Initiate or equivalent submission must be approved by the Vertical DCE and the CPO prior to initiating a sole source procurement. Sole source contracts must be approved by the same officials as approve competitively selected contracts after a winning bidder has been identified by the Office of Purchasing or the department Selection Committee.

Legislative approval of a sole source contract is required as for those made for other goods, non-personal services, and personal services as applicable.



## **Appendix Q: Small Purchases and Direct Purchase Orders**

### **PURCHASES OF LESS THAN \$500**

No informal bids need be solicited, but purchase price shall be determined to be fair and reasonable.

### **PURCHASES BETWEEN \$500 AND \$3,000**

- The Director of Purchasing or their designee must obtain verbal price quotes from at least three vendors on the Office of Purchasing's list of qualified vendors for the good or service.
- Solicitations are to be posted on the County's bid board.
- If there are less than three vendors on the list, the Director or the designee shall solicit quotes from all vendors on the list and shall document why there are no other reasonably available vendors from which to obtain quotes.
- In addition, quotes may be solicited from vendors who have replied to prior solicitations or who have been recommended by the department requesting the purchase.

The Director of Purchasing or their designee shall set forth in writing in the procurement file the reason for selecting the winning vendor.

### **PURCHASES GREATER THAN \$3,000 BUT NOT MORE THAN \$10,000**

- The Director of Purchasing or designee shall issue a Request for Quotations soliciting price quotes in writing or by fax from at least three vendors, again using the Office of Purchasing bidder list.
- Solicitations are to be posted on the County's bid board.
- Again, quotes may also be solicited from other vendors who have replied to prior solicitations or to vendors recommended by the requesting department.

The Director of Purchasing or their designee must set forth in writing in the procurement file the reason for selecting the winning vendor.

### **APPROVAL OF SMALL PURCHASES**

Small purchase awards are subject to the same approvals that apply to formal sealed bid purchases after a winning bidder or proposer has been identified.

Only small purchases for personal services in excess of \$1,000.00 require Legislative approval.

### **DIRECT PURCHASE ORDERS**

Supplies or other goods that may be needed by multiple agencies often will be contracted for by the Director of Purchasing at the beginning of the year under "blanket contracts." The blanket contract normally will be subject to competitive bidding requirements, but after it has been executed, individual departments may place direct orders with the County Office of Purchasing for items purchased under a blanket contract. Such direct purchase orders are subject to approval by OMB and by the Comptroller.

## **Appendix R: Preferred Sources**

### **PREFERRED SOURCES AND FACILITATING AGENCIES**

Preferred Sources include:

- Commodities produced by the State Department of Correctional Services' Correctional Industries Program (CORCRAFT).
- Commodities and Services produced by any qualified, charitable, non-profit-making agency for the blind approved by the State Commissioner of Social Services.
- Commodities and Services produced by any special employment program serving mentally ill persons, operated by facilities within the State Office of Mental Health and approved by the Commissioner of Mental Health.
- Commodities and Services produced by any qualified, charitable, non-profit-making agency for the other severely disabled persons approved by the State Commissioner of Education.
- Commodities and Services produced by a qualified veterans' workshop providing job and employment skill training to veterans, operated by the United States Department of Veterans Affairs, that manufactures products or performs services within the State and is approved by the Commissioner of Education.

OGS has designated a number of non-profit organizations to act as "Facilitating Agencies" for Preferred Sources. Facilitating agencies serve the preferred sources as their agent by disseminating information regarding preferred sources and their offerings, by processing inquiries and orders as a "one stop" contact for purchasers, and by facilitating the distribution of those commodities and services provided by preferred sources.

### **PRIORITY AMONG PREFERRED SOURCES**

Commodities available in the form, function and utility required by the County must be purchased from preferred sources in the following prioritized order:

- 1st - Department of Correctional Services' Correctional Industries Program.
- 2nd - Approved, charitable, non-profit making agencies for the blind;
- 3rd - Equal priority to approved, charitable, non-profit- making agencies for the severely disabled, qualified special employment programs for mentally ill persons, and qualified veterans' workshops.

Services available in the form, function, and utility required by the County must be purchased from a preferred source. Equal priority is accorded to approved, charitable, non-profit-making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons and qualified veterans' workshops. If more than one preferred source meets the service requirements, cost shall be the determining factor in selecting among the qualified sources.

Preferred source purchases must be approved by OMB, the Director of Purchasing, and the Comptroller.

## Appendix S: Sample Multi-Year Term Language for Client Services Contracts

Following is an example of multi-year term language used by the Department of Social Services for use in client services contracts. This language may be modified to apply to other departments' contracts as necessary to implement multi-year contract terms as encouraged by this policy:

Proposed Language for all Multi-Year Contracts:

### Funding for Additional Agreement Years

Funding for additional Agreement years is contingent on availability of funds for this purpose. If funds are made available by the County for additional Agreement years, and the Legislature of the County makes a budgetary appropriation for this purpose, the Department may allocate a portion of the funds for that particular Agreement year. Such allocation of funding for additional Agreement years shall be accomplished by written notification from the Department to the Contractor, and subsequent processing of a contract advisement to add the additional Agreement year funds. The Department shall notify the Contractor by letter of the availability of funds for additional Agreement year(s). The availability of additional Agreement year funds shall be subject to necessary County approvals for the budgetary appropriation for this purpose and the encumbrance of funds. Payment to the Contractor of any such funds shall be made in accordance with the terms of this Agreement, including but not limited to all reconciliation and voucher requirements and additional funding provisions as well as the approved budget for the Agreement year. In the event that funds are not approved by the County for any given Agreement year, the County is under no obligation to provide funds for the contract for the given period, and the vendor has no claim under the contract for funds that have not been duly authorized by the County.

For COLAs based on CPI—Add to Payment Section:

(1) COLA Adjustments. Commencing with the second year of this Agreement, and for each subsequent contract year, for qualifying contracts the Contractor may apply for cost-of-living (“COLA”) adjustments to eligible personal salaries and fringe benefits. Applications are due [STATE DEADLINE]. The Department will review, and shall have the authority to act on, all applications for COLA adjustment in accordance with the following guidelines:

#### Guidelines

- Applied to qualifying contracts & for eligible expenses ONLY.
- Qualifying contracts consist of those contracts eligible for COLA adjustments under applicable federal, state or local guidelines [How does the Contractor know if contract eligible?].
- Eligible expenses consist of salaries &/or fringe. Applies to Line 1 Personnel expenses only.
- Applied once a year on an annual basis.
- Does not apply to contracted salaries already covered by the Living Wage Law.
- Does not apply to contracts that do not include line item budgets with salary & fringe expenses.
- Separate line item expense, not just worked into salary & fringe expenses. Enables DSS to monitor COLA impact.
- To receive COLA funds, the contractor must submit a COLA Universal Budget Form that highlights which expenses are impacted by the COLA & total COLA funds requested. Include a signed certification that attests COLA funds will only be applied to eligible expenses.
- Vacant positions: COLA increases would not apply to vacant positions.
- Subject to these guidelines, commencing with the first day of January of 20\_\_ [This would be Jan 1 of year two of the contract term], and thereafter on January 1 of each succeeding year throughout the term of this Agreement, eligible personnel salaries and fringe benefits shall increase by the percentage increase, if any, in the "CPI Index" between (i) September 1<sup>st</sup> immediately preceding the first day of

January of the contract year with respect to which such calculation is being made and (ii) September 1<sup>st</sup> immediately preceding the first day of the prior contract year. As used herein, the term "CPI Index" shall mean the Consumer Price Index For All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor, for the New York-Northern NJ-Long Island Region, NY-NJ-CT-PA (1982-84 =100), or, if unavailable, any renamed local index covering the metropolitan New York area, as selected by the County.

- Maximum cap: In no event will such wage increase be greater than maximum cap (i.e. 3.5%)
- If the CPI Index decreases the COLA change will be zero
- Nassau County is not obligated to pay a COLA increase in any contract year. The payment of a COLA increase in any year is dependent upon the availability of funds.
- The Contractor shall be notified by the Department in writing of a COLA increase, if any, prior to the start of each contract year.
- COLA funds may be added to the contract by the County processing an advisement.

For non-CPI-based COLAs (e.g. those stipulated by non-County funding sources)—Add to Payment Section:

(2) COLA Adjustments. Commencing with the second year of this Agreement, and for each subsequent contract year, for qualifying contracts the Contractor may receive cost-of-living adjustments (“COLAs”) as stipulated by the non-County funding source. COLA funding may be added by the County processing an advisement.

## **Appendix T: Responsibility Determination Data Search Checklist**

On the following pages as a standard Contractor Responsibility Determination Checklist. This checklist may be modified to apply to departments' specific contracts as necessary to support the Responsibility Determination requirements of this policy. All modifications to the Checklist must be approved by the CPO.

## Contractor Responsibility Determination Checklist

*Complete for all Formal Sealed Bid, Request for Proposals, Streamlined Competitive Proposals, Formal Sole Source Procurements, and Cooperative Procurements, as appropriate*

<b>Solicitation Name and #:</b>	<b>Contractor Name &amp; Address:</b>	<b>Staff Completing &amp; Date:</b>

<b>Verification</b>	<b>Description</b>	<b>Verified (Y, N or n/a)</b>
<b>Required Sources</b>		
Nassau County Comptroller's Office	Identify Audits performed by Comptroller reflecting upon performance and integrity issues. <a href="https://www.nassaucountyny.gov/2377/Audits">https://www.nassaucountyny.gov/2377/Audits</a>	
NYS Department of State Division of Corporations, Uniform Commercial Code NYS Standard Debtor Search	This database includes Financing Statements and Financing Statement Amendments filed under Art. 9 and Revised Art. 9 of the UCC and Notices of Federal Tax Liens filed under Article 10-A of the Lien Law <a href="http://appext20.dos.ny.gov/pls/ucc_public/web_search.main_frame">http://appext20.dos.ny.gov/pls/ucc_public/web_search.main_frame</a>	
Federal System for Award Management (SAM), Excluded Parties List	Contains publicly available data for all active exclusion records entered by the Federal government identifying parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. <sup>1</sup> <a href="https://www.sam.gov/">https://www.sam.gov/</a> Public User – Identifying Excluded Entities, <a href="https://www.sam.gov/sam/transcript/Public_-_Identifying_Excluded_Entities.pdf">https://www.sam.gov/sam/transcript/Public_-_Identifying_Excluded_Entities.pdf</a>	
List of Debarred Offerors Maintained by the NYS Office of General Services under NYS Finance Law §139- (10)(b)	NYS Law §139-j(10) obligates a Governmental Entity to notify NYS OGS when it makes a determination of non-responsibility due to a violation of State Finance Law §139-j (a knowing and willful violation of the permissible Contacts requirements). Any subsequent determination of non-responsibility within a four-year period shall result in an Offeror being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of four years from the date of the second final determination. <a href="http://ogs.ny.gov/aboutogs/regulations/SFL_139j-k/Debarred.htm">http://ogs.ny.gov/aboutogs/regulations/SFL_139j-k/Debarred.htm</a>	
NYS Department of State (DOS), Corporation and Business Entity Database	The Corporation and Business Entity Database online search is intended for status inquiries of entities already on file with DOS. <a href="http://www.dos.ny.gov/corps/bus_entity_search.html">http://www.dos.ny.gov/corps/bus_entity_search.html</a>	
NYS Education Department, Office of the Professions, Verification Searches	Verifying NYS Licenses Up-to-the-minute license and registration status are available on this site. The information on the Web is current and official. <a href="http://www.op.nysed.gov/opsearches.htm#nme">http://www.op.nysed.gov/opsearches.htm#nme</a>	
Internet Search (e.g. Google, etc.)	Search vendor name and debar, default, lien, bankruptcy, crime, and felony	

Google News	Research information reflecting upon performance and integrity issues. <a href="https://news.google.com/">https://news.google.com/</a>	
<b>Additional Resources (use as applicable)</b>		
NYS AG's Office Charities Bureau, Search Charities Database	Not-for-profit corporations must file with the Charities Bureau. <a href="http://www.charitiesnys.com/RegistrySearch/search_charities.jsp">http://www.charitiesnys.com/RegistrySearch/search_charities.jsp</a>	
Foundation Center Form 990 Finder	IRS Form 990 is an annual reporting return that certain federally tax-exempt organizations must file with the IRS. It provides information on the filing organization's mission, programs, and finances. <a href="http://foundationcenter.org/findfunders/990finder/">http://foundationcenter.org/findfunders/990finder/</a>	
IRS Automatic Charities Revocation of Exemption List	The IRS publishes a list of organizations that have had their federal tax-exempt status automatically revoked for failing to file an annual information return or notice with the IRS for three consecutive years. <a href="http://www.irs.gov/Charities-&amp;-Non-Profits/Automatic-Revocation-of-Exemption-List">http://www.irs.gov/Charities-&amp;-Non-Profits/Automatic-Revocation-of-Exemption-List</a>	
NYS Unified Court System WebCriminal	WebCriminal provides information on criminal cases with future appearance dates for selected New York State Courts of criminal jurisdiction. Free public service requires registration. <a href="https://iapps.courts.state.ny.us/webcrim_attorney/AttorneyWelcome">https://iapps.courts.state.ny.us/webcrim_attorney/AttorneyWelcome</a>	
NYS Unified Court System WebCriminal	WebCriminal provides information on criminal cases with future appearance dates for selected New York State Courts of criminal jurisdiction. Free public service requires registration. <a href="https://iapps.courts.state.ny.us/webcrim_attorney/AttorneyWelcome">https://iapps.courts.state.ny.us/webcrim_attorney/AttorneyWelcome</a>	
NYS Department of Corrections and Community Supervision, Inmate Population Information Search	Provides information on status and location of inmates incarcerated in a NYS Department of Correctional Services prison. Information also provided on former inmates. <a href="http://nysdoccslookup.doccs.ny.gov/">http://nysdoccslookup.doccs.ny.gov/</a>	
NYS Division of Criminal Justice Services Search Public Registry of Sex Offenders	CJS provides information online about Level 2 and 3 sex offenders living in NYS <a href="http://www.criminaljustice.ny.gov/nsor/">http://www.criminaljustice.ny.gov/nsor/</a>	

Family Watchdog	Family Watchdog is a free service to help locate registered sex offenders in your area <a href="http://www.familywatchdog.us/">http://www.familywatchdog.us/</a>	
Office of Inspector General (OIG) US Dept. of Health & Human Services (HHS) List of Excluded Individuals and Entities (LEIE) Exclusions Database	OIG has the authority to exclude individuals and entities from federally funded health care programs pursuant to sections 1128 and 1156 of the Social Security Act and maintains a list of all currently excluded individuals and entities called the List of Excluded Individuals and Entities (LEIE) <a href="https://exclusions.oig.hhs.gov/Default.aspx">https://exclusions.oig.hhs.gov/Default.aspx</a>	
NYS OCFS Fiscal Sanction List	A Fiscal Sanction is initiated when a contractor has not responded to requests to repay or resolve balances due OCFS. When a Fiscal Sanction is in place, the contractor will receive no payments from OCFS, nor will OCFS enter into any new contracts <a href="http://ocfs.state.nyenet/admin/ofm/Contracts/Sanction/">http://ocfs.state.nyenet/admin/ofm/Contracts/Sanction/</a>	
NYS Office of the Medicaid Inspector General (OMIG)	Medicaid Terminations and Exclusions <a href="http://www.omig.state.ny.us/search-exclusions">http://www.omig.state.ny.us/search-exclusions</a>	
NYS Physician Profile	Profiles of licensed doctors of medicine and osteopathy in NYS <a href="http://www.nydoctorprofile.com/">http://www.nydoctorprofile.com/</a>	
Open Book New York, NYS Comptroller	NYS Active Contract Search, all active NYS agency contracts <a href="http://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm">http://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm</a>	
NYS OCFS Child Care Programs Facility Lookup	For childcare programs. Facility licensing, status, compliance & enforcement history <a href="http://ocfs.ny.gov/main/childcare/ccfs_template.asp">http://ocfs.ny.gov/main/childcare/ccfs_template.asp</a>	



## **NOTES**

Contracts and purchase orders funded with Federal dollars are not to be awarded to vendors debarred or suspended from receiving Federal contracts. Procurements should not be made from vendors with active exclusions. Departments should perform an inquiry on SAM.gov for all prospective vendors using Federal awards, do a screen print of the results, and maintain a file supporting each contract available for auditors.

## **Appendix U: Applicability of this Policy**

General Applicability: Except as otherwise provided by law, this Policy shall apply to the procurement of all goods, services, personal services, and construction to be paid for out of monies appropriated by the County Legislature.

Procurement Requirements Prescribed by Entities External to the County or other Applicable Law.

The source selection requirements of this Policy shall not apply to procurements where a source of funds outside the County, a federal or State statute or rule, the terms of a court order or consent decree, or other applicable law expressly authorizes or requires that a procurement be made from a specified source. All other provisions of the Policy shall apply to such procurement.

Severability. If any provision of the Policy or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the Policy that can be given effect without the invalid provision or application, and to this end the provisions of the Policy are declared to be severable.

## **Appendix V: Templates of Proposal Selection Committee Documents**

Below are templates of proposal selection committee documents to be signed by all members of the selection committee prior to opening proposals. These documents ensure that all members are aware of their obligation to conduct their review of the solicitation in an ethical manner that adheres to the established code of conduct.

The first three certifications are to be completed by all County employees participating in the selection committee:

Competitive Proposal Solicitation Rules and Responsibilities

Certification of Participants in the Selection, Negotiation, or Award of Contracts

Conflict of Interest Affirmation

The remaining four certifications are to be completed by all non-County individuals participating in the selection committee, or outside a selection committee performing in an advisory function embedded with County staff, or, for the last certification, by a Principal of the entity employing the participating individual:

Competitive Proposal Solicitation Rules and Code of Ethics for Consultants

Certification of Consultants Participating in the Selection, Negotiation or Award of Contracts

Conflict of Interest Affirmation for Consultants

Conflict of Interest Affirmation for Principal of Consultant Firm



## COMPETITIVE PROPOSAL SOLICITATION RULES AND RESPONSIBILITIES

Selection Committee members shall agree to abide by and conduct themselves in accordance with the Nassau County Charter, Executive Orders and the County's Procurement and Compliance Policy rules on ethics, conflicts of interest and proper conduct when evaluating proposals received for County contracts which are summarized below.

By signing below, you agree to and acknowledge your responsibilities as a voting or nonvoting member of the evaluation committee for the selection of a vendor for:

- 
1. **Ethics** – I understand that the highest standards of integrity are required when evaluating proposals. I will treat the evaluation of all vendors fairly and equally.
  2. **Independent Decision Making** - I agree not to collude with other selection committee members, vendors, or decision-makers for the purpose of steering this contract to a particular vendor. I am not allowed to use any unethical persuasion tactics, or allow myself to be persuaded unethically. No one is my supervisor in this process. I am to act independently as an authorized representative of Nassau County.
  3. **Evaluation** - As a voting member, I will be evaluating proposals. I understand that this involves a multi-step process that requires individually rating proposals and discussing amongst the committee in several different steps, if necessary.
  4. **Commitment** - I understand that I must be prepared and attend all meetings concerning this Solicitation.
  5. **Respondents** – I acknowledge that direct contact with potential or actual vendors concerning this Solicitation is not permitted unless within the context of the solicitation procedures (oral interviews, etc.). I may not provide any information to vendors concerning the selection process or any other matter concerning the solicitation review process.
  6. **Justification** - I understand that I will be required to justify my decision in writing.
  7. **Confidentiality** - I agree to keep the proposals and the subsequent evaluation process and any information that I obtain from the proposals and the subsequent evaluation process strictly confidential.

If I cannot agree to the County's rules, laws, and or procedures, or if at any time I believe I may have a conflict of interest, I understand that I must inform the authorized Department Contact Person immediately. I

understand that if I appear to have a conflict of interest, I will be excused from the evaluation process.

***ACKNOWLEDGMENT BY THE EVALUATION COMMITTEE MEMBER***

<i>Name</i>	<i>Signature</i>	<i>Department</i>	<i>Email</i>	<i>Tel. No.</i>	<i>Date</i>



**CERTIFICATION OF PARTICIPANTS IN THE SELECTION,  
NEGOTIATION OR AWARD OF CONTRACTS**

This certification applies to County employees, and to employees of affiliated agencies, consultants or agents who participate on behalf of the County, in the selection, negotiation or award of a contract through the Request for Proposal (RFP) or Streamlined Competitive Proposal (SCP) process (i.e. a process whereby a consultant, contractor or vendor is selected on a basis other than solely submission of a lowest responsive, responsible bid).

This certification is to be completed by members of the Selection Committee, technical advisors, cost/price analysis participants, financial data reviewers, and any other personnel who may be assigned to assist in the RFP procurement process.

1. I, the undersigned, a participant in the procurement process for the solicitation for \_\_\_\_\_, certify that I will not discuss or reveal any information concerning these selection proceedings to anyone who is not also participating in the same selection proceeding, and then only to the extent that such information is required in connection with such proceedings on a need-to-know basis or as officially authorized communication to all vendors necessary for the conduct of the solicitation. This limitation is effective for the entire period of and subsequent to this selection committee's proceedings.
  
2. I further agree that if at any time I discover that I have either a real or an apparent interest in, or connection with, a company or individual submitting a proposal for evaluation for this solicitation, I shall promptly report, in writing to the authorized point of contact for the solicitation, the fact of my interest or connection, and the nature of it, to the Department Chief Contracting Officer through the individual who has appointed me to these proceedings. I recognize that a reportable interest or connection includes but is not limited to the following:
  - a. Ownership of a company's securities by myself or a member of my immediate family;
  
  - b. Past employment, by myself, with either the prime consultant, contractor or vendor or with a proposed sub consultant, subcontractor or supplier;

- c. Present employment by a member of my immediate family with either the prime consultant, contractor or vendor or with a proposed subconsultant, subcontractor or supplier; and
  - d. Any other interest or connection with a company or individual which might tend to subject the County to criticism on the basis that such interest or connection would impair my objectivity in participating in the selection process for this solicitation.
3. To ensure that evaluation committee members with prior experience working directly for any vendor that currently does business with the County are sufficiently separated from the prior employer and have no conflict of interest, the following guidelines are to be followed:
- Evaluation committee members must not have worked directly within the year preceding the publication of any solicitation for any firm that may participate in the solicitation for professional services, including but not limited to engineering, architectural, surveying, accounting, legal, medical, computer programming, consulting, or other such services.
  - Evaluation committee members that were previously employed at a firm responding to the solicitation to be evaluated must not have any form of deferred compensation due from that firm or any ownership interest in that firm. This prohibition excludes interests in any retirement account, 401K, or similarly intended savings account established and funded during the evaluation committee member's former employment with the proposing firm.
  - Evaluation committee members that previously worked directly for a firm that may participate in the solicitation may not have any spouse, parent, child or domestic partner employed as a director, officer, executive, or agent by the former employer.
  - Evaluation committee members that previously worked directly for a firm that is likely to or does participate in a solicitation to be evaluated must not have any other apparent or potential conflict of interest related to the former employer. For example, there could be certain situations where an evaluation committee member has a non-immediate family member who works for or has an ownership interest in a proposing firm which might create an appearance of a conflict. If an evaluation committee member is uncertain if he or she has such a potential conflict of interest, he or she should seek the guidance of the Chief Procurement Officer who will make a prompt determination.

4. In addition, I fully realize that any violations of County rules and regulations or applicable statutory provisions may subject me to discipline and/or expose me to civil or criminal penalties.

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participant's Name (Print)

\_\_\_\_\_  
Title





**Conflict of Interest Affirmation**

By signing below, I am certifying that I have reviewed the list of Proposers for the

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and do not knowingly have a conflict of interest regarding my serving on the Selection Committee as a voting or nonvoting member.

---

Name (print)

---

Signature

---

Date



**COMPETITIVE PROPOSAL SOLICITATION RULES AND RESPONSIBILITIES  
FOR CONSULTANTS**

Selection Committee members and consultants reviewing vendor offers and/or qualifications on behalf of Nassau County shall agree to abide by and conduct themselves in accordance with the Nassau County Charter, Executive Orders, Vendor Code of Ethics, and the County's Procurement and Compliance Policy rules on ethics, conflicts of interest and proper conduct when evaluating proposals received for County contracts which are summarized below.

By signing below, I agree to and acknowledge my responsibilities as a consultant providing services to the County for the selection of a vendor for:

- 
1. **Ethics** – I understand that the highest standards of integrity are required when evaluating proposals. I understand that I am to treat my evaluation of all vendors fairly and equally.
  2. **Independent Decision Making** - I agree not to collude with other selection committee members, vendors, or decision-makers for the purpose of steering this contract to a particular vendor. I am not allowed to use any unethical persuasion tactics, or allow myself to be persuaded unethically. I am to act independently as an authorized representative of Nassau County.
  3. **Evaluation** – I understand that evaluating proposals may involve a multi-step process that requires individually rating proposals and discussing amongst the committee in several different steps.
  4. **Commitment** – I understand that I must be prepared and attend all meetings concerning this Solicitation as necessary.
  5. **Respondents** – I understand that direct contact with potential or actual vendors concerning this Solicitation is not permitted unless within the context of the solicitation procedures (oral interviews, etc.). I may not provide any information to vendors concerning the selection process or any other matter concerning the solicitation review process.
  6. **Justification** – I understand that I will be required to justify my decision in writing.
  7. **Confidentiality** - I agree to keep the bids or proposals and the subsequent evaluation process and any information that I obtain from the bids or proposals and the subsequent evaluation process strictly confidential.

If I cannot agree to the County's rules, laws, and procedures, or if at any time I believe I have a conflict of interest, I understand that I must inform the authorized Department Contact Person immediately. I understand that if I appear to have a conflict of interest I will be excused from the evaluation process.

***ACKNOWLEDGMENT BY THE CONSULTANT***

Name	Signature	Firm	Email	Tel. No.	Date



**CERTIFICATION OF CONSULTANTS PARTICIPATING IN THE SELECTION,  
NEGOTIATION OR AWARD OF CONTRACTS**

This certification applies to County consultants or agents who participate on behalf of the County in the selection, negotiation or award of a contract.

This certification is to be completed by members of the Selection Committee, technical advisors, cost/price analysis participants, financial data reviewers, and any other personnel who may be assigned to assist in the procurement process.

1. I, the undersigned, a participant in the procurement process for the solicitation for \_\_\_\_\_, certify that I will not discuss or reveal any information concerning these selection proceedings to anyone who is not also participating in the same selection, and then only to the extent that such information is required in connection with such proceedings on a need-to-know basis or as officially authorized communication to all vendors necessary for the conduct of the solicitation. This limitation is effective for the entire period of and subsequent to this selection process.
  
2. I further agree that if at any time I discover that I have either a real or an apparent interest in, or connection with, a company or individual submitting a proposal for evaluation for this solicitation, I shall promptly report, in writing to the authorized point of contact for the solicitation and to the Department Chief Contracting Officer, the fact of my interest or connection, and the nature of it. I recognize that a reportable interest or connection includes but is not limited to the following:
  - Ownership of a company's securities by myself, a member of my immediate family, or my firm;
  
  - Past employment, by myself, with either the prime consultant, contractor or vendor or with a proposed sub consultant, subcontractor or supplier;

8. Present employment of a member of my immediate family with either the prime consultant, contractor or vendor or with a proposed subconsultant, subcontractor or supplier; and
  9. Any other interest or connection between myself and/or my firm with a company or individual which might tend to subject the County to criticism on the basis that such interest or connection would impair my objectivity in participating in the selection process for this solicitation.
3. To ensure that evaluation committee members with prior experience working directly for any vendor that currently does business with the County are sufficiently separated from the prior employer and have no conflict of interest, the following guidelines are to be followed:
- Evaluation committee members must not have worked directly within the year preceding the publication of any solicitation for any firm that may participate in the solicitation for professional services, including but not limited to engineering, architectural, surveying, accounting, legal, medical, computer programming, consulting, or other such services.
  - Evaluation committee members that were previously employed at a firm responding to the solicitation to be evaluated must not have any form of deferred compensation due from that firm or any ownership interest in that firm. This prohibition excludes interests in any retirement account, 401K, or similarly intended savings account established and funded during the evaluation committee member's former employment with the proposing firm.
  - Evaluation committee members that previously worked directly for a firm that may participate in the solicitation may not have any spouse, parent, child or domestic partner employed as a director, officer, executive, or agent by the former employer.
  - Evaluation committee members that previously worked directly for a firm that is likely to or does participate in a solicitation to be evaluated must not have any other apparent or potential conflict of interest related to the former employer. For example, there could be certain situations where an evaluation committee member has a non-immediate family member who works for or has an ownership interest in a proposing firm which might create an appearance of a conflict. If an evaluation committee member is uncertain if he or she has such a potential conflict of interest, he or she should seek the guidance of the Chief Procurement Officer who will make a prompt determination.

4. In addition, I fully realize that any violations of County rules and regulations or applicable statutory provisions may subject me to discipline and/or expose me to civil or criminal penalties.

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participant's Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm



**Conflict of Interest Affirmation For Consultants**

By signing below, I am certifying that I have reviewed the list of Proposers for the

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and neither I nor my firm knowingly has a conflict of interest regarding my serving in this vendor selection process.

---

Name (print)

---

Firm

---

Signature

---

Date



**Conflict of Interest Affirmation for Principal of Consultant Firm**

For the purpose of completing this form, "firm" is defined as any consultant or other non-County entity which is assigned to review one or more vendors and/or their offers related to the solicitation indicated below. In this context, the firm includes in addition to the entity itself, any wholly controlling entity or individual, and any combination of partially controlling entities and/or individuals holding more than 50% ownership of the submitting firm. This form must be certified by a principal of the firm.

By signing below, I \_\_\_\_\_, am certifying that I have reviewed the list of bidders/proposers for the

\_\_\_\_\_

and the below-named firm (my firm) does not to my knowledge have a conflict of interest regarding any of the bidders /proposers, nor do I or any employee of my firm serving in this vendor evaluation process have a conflict of interest. I further certify that, except as indicated below:

1. This firm has no financial interest in, connection to, or relationship with any bidder or proposer.
2. This firm has no projects planned or in progress with any bidder or proposer.
3. This firm has not performed work with any bidder or proposer in the prior 12 months.
4. No employee of the firm that has any interest in, connection to, or relationship with any bidder or proposer for the above-named solicitation shall be assigned to perform work related to the solicitation.

\_\_\_\_\_  
\_\_\_\_\_

Any exception to the above statements must be stated below:

\_\_\_\_\_



---

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Name (print)

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Title

---

Firm

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Signature

---

Date

Page 2 of 2

## **Appendix W: Vendor Integrity Monitoring Program**

Nassau County's Vendor Integrity Monitoring Program ("Program") allows for continuity of County vendor services through the appointment of an independent integrity monitor ("IM") to review potential integrity issues. This Program establishes a method for Nassau County to enter into and/or continue, at the discretion of the County, with certain contracts while the vendor is being monitored and undergoing an independent review by a private sector investigations and monitoring firm.

Under this Program, vendors with potential integrity issues are eligible to enter into and/or continue contracting with Nassau County if the vendor agrees to be monitored by an outside IM. Integrity issues could range from the vendor being under indictment or being the target of a criminal investigation to a vendor exhibiting a significant integrity concern during the contracting process or when a question arises regarding compliance with statements made on vendor disclosures. In such instances, the vendor will voluntarily enter into and pay for a partial or full monitorship program that appropriately addresses the integrity concerns that have been identified. The Program may have a short duration where an independent review of a particular timeframe or issue is warranted. As part of these monitoring services, businesses may be required to adopt a stronger code of ethics, adopt policies that monitor relationships between their employees and employees of Nassau County, submit periodic certifications concerning their business responsibility, or take any other corrective steps indicated by the IM.

In order to select the most qualified IMs, the County shall conduct periodically a Request For Qualifications to maintain its list of qualified IMs. IMs are firms with special legal, auditing, and investigative skills selected by the County through a competitive process to ensure independence, transparency, and integrity. The cost of monitoring services for vendors that are required to accept one to address integrity concerns the County has must be funded by the vendor.

The County also may hire an IM at the County's discretion and expense to monitor one or more vendors that may not have known integrity issues for the purpose of ensuring overall compliance in the conduct of a particular contract, project or program.

## **Appendix X: Whistleblower Protection**

As a Nassau County employee, you are protected by Administrative Code §22-4.4 (the “County Whistleblower Law”) against retaliatory personnel action for reporting any allegations of improper government action by a County officer, employee or agent that violates federal, state or local law or rule or regulations. Such allegations may be reported to your supervisor or department head, or to any appropriate governmental body, including but not limited to, the District Attorney (if the allegations involve criminal conduct), the County Board of Ethics, the Inspector General, the Director of Human Resources, the County Executive or any Deputy County Executive, the Presiding Officer or Minority Leader of the Legislature, the County Attorney or the County Comptroller (if the allegation involves misuse of funds).

In order to assert protection from retaliation, you must: (i) reasonably believe the allegations to be true; (ii) reasonably believe the allegations constitute improper government action that violates a federal, state or local law or rule or regulation; and (iii) must have first reported such improper action to your supervisor or department head and allowed a reasonable time for your agency to take corrective action unless there is an imminent and serious danger to public health and safety.

If you believe that you have been subject to retaliation for disclosing improper government action, you may bring a civil action in a court of competent jurisdiction under the County Whistleblower Law within one year of the alleged retaliation.

Additionally, section 196 of the County Charter provides in part that any person who 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 is guilty of a crime.

## **Appendix Y: Zero-Tolerance Policy**

Pursuant to Executive Order 2-2018 (the "Executive Order"), Nassau County (the "County") has implemented a zero-tolerance policy regarding gifts to or from anyone that does business with or is likely in the future to do business with the County, including, but not limited to, tenants, vendors, concessionaires, and their representatives or representative associations (a "County Vendor"). The policy is as follows:

In accordance with the Executive Order, all County employees, agents, consultants, construction managers, or other persons or firms representing the County (a "County Representative"), including their immediate family members, are prohibited from accepting gifts of any kind, form, or value from any County Vendor in connection with the performance by such County Representative of duties involving transactions with the County Vendor on behalf of the County. Additionally, all County Representatives, including their immediate family members, are prohibited from offering gifts, gratuities, or payments of any kind, form, or value to any County Vendor in connection with the performance by such County Representative of duties involving transactions with the County Vendor on behalf of the County.

As used herein, "anything of value" or "of any kind, form, or value" shall include, but not be limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, currency of any kind, cash discounts not available to all County employees, or any other gifts, gratuities, favorable opportunities or preferences. As used herein, "immediate family members" shall include a spouse, child, parent, or sibling. This policy also applies to subcontractors of County Vendors that have been engaged under any County contract.

The County's boilerplate contract terms and solicitation documents shall include language that is required by the Executive Order.

The above is a summary of Executive Order No. 2-2018 and does not supersede it. To the extent there is any conflict between this summary and the Executive Order, the Executive Order governs.

Any department that utilizes a contract template that is different than the standard model template included in this Policy must insert the following language into its contract template under the "Compliance with Law" section:

( [insert appropriate letter] ) Prohibition of Gifts. In accordance with County Executive Order 2-2018, the Contractor shall not offer, give, or agree to give anything of value to any County employee, agent, consultant, construction manager, or other person or firm representing the County (a "County Representative"), including members of a County Representative's immediate family, in connection with the performance by such County Representative of duties involving transactions with the Contractor on behalf of the County, whether such duties are related to this Agreement or any other County contract or matter. As used herein, "anything of value" shall include, but not be limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, currency of any kind, or any other gifts, gratuities, favorable opportunities or preferences. For purposes of this subsection, an immediate family member shall include a spouse, child, parent, or sibling. The Contractor shall include the provisions of this subsection in each subcontract entered into under this Agreement.

( [insert appropriate letter] ) Disclosure of Conflicts of Interest. In accordance with County Executive Order 2-2018, the Contractor has disclosed as part of its response to the County's Business History Form, or other disclosure form(s), any and all instances where the Contractor employs any spouse, child, or parent of a County employee of the agency or department that contracted or procured the goods and/or services described under this Agreement. The Contractor shall have a continuing obligation, as circumstances arise, to update this disclosure throughout the term of this Agreement.

Any individual who becomes aware of any violation of this policy must report it immediately to the independent Inspector General's Hotline (516) 571-IG4U (4448).

## **Appendix Z: Vendor Code of Ethics**

The Vendor Code of Ethics, provided below, sets forth a Code of Conduct for vendors to ensure that Nassau County Vendors are conducting their business with integrity, ethics, and compliance with all applicable laws and regulations.

LAURA CURRAN  
NASSAU COUNTY EXECUTIVE

# NASSAU COUNTY



## Vendor Code of Ethics



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## Chapter 1: DEFINITIONS

As used in this Code, the following terms have the following meanings:

**Adverse Job-Related Action** includes any material alteration to existing terms, conditions, and privileges of employment, such as dismissal, demotion, suspension, compulsory leave, disciplinary action, creation of a hostile work environment, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, reduction in compensation, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected employee.

**Contact** means any oral or written communication with any Nassau County Employee, other than the Designated Point(s) of Contact, where it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the subject of a County procurement.

**Designated Point(s) of Contact** means the individual(s) designated by the County to be a Vendor's only contact with Nassau County following the public advertisement of a solicitation or the issuance of a request for a bid, proposal, or quote for small purchase, until the award of a resulting contract and, where applicable, approval by the County Legislature. This timeframe, further defined in the State Procurement Lobbying Law, is also known as the Restricted Period.

**Nassau County Employee** means any officer, official or employee of Nassau County.

**Family Member** means (i) a Nassau County Employee's Spouse, Domestic Partner, Child, Sibling or Parent; (ii) a person who is a direct descendant (or the spouse of a direct descendant) of a Sibling of the Nassau County Employee or a Sibling of the Nassau County Employee's Spouse or Domestic Partner; or (iii) a person living in the same household as a Nassau County Employee.

**Gift** means the transfer, without equivalent consideration, of anything of benefit, tangible or intangible, having more than nominal value, including, but not limited to, cash, loans, forbearance,



## Vendor Code of Ethics

services, travel, gratuities of any kind, favors, money, meals, refreshments, entertainment, hospitality, admittance to private clubs, use of time-shares, personal use of the Vendor's facilities, promises, tickets to entertainment or sporting events, weekend trips, golf outings, loans of equipment, or other thing or benefit. A Gift need not be intended to influence or reward any individual or entity.

**Nassau County Code of Ethics** means Nassau County Charter Section 2218, and the rules and regulations promulgated thereunder as may be amended or modified.

**Participating Employee** means any Vendor employee who engages in any written or oral communication of a non-clerical or non-administrative nature with Nassau County or with a Nassau County Employee(s) as part of or in connection with the procurement.

**Participating Nassau County Employee** means any Nassau County Employee who the Vendor knows, has reason to know, or can reasonably anticipate is involved in a specific procurement, in either a direct or decision-making capacity, but not in a clerical capacity. This includes but is not limited to the Designated Point of Contact, the project manager, the project manager's staff to the extent that they are involved in the procurement, members of selection committees, technical experts and negotiating teams.

**Primary Contracting Party** means a Vendor who intends to directly enter into or has a contract with Nassau County.

**Retaliatory Action** is defined as any Adverse Job-Related Action taken by, or at the direction or request of, a Vendor or a Vendors' Employees as a result of any individual's (i) good-faith report with respect to a violation or potential violation of this Code or the law; or (ii) cooperation in any investigation of unlawful conduct or misconduct conducted by Nassau County or by federal, state, or local law enforcement officials.

**State Procurement Lobbying Law** means New York State Finance Law Sections 139-j and 139-k, and the rules and regulations promulgated thereunder as may be amended or modified.

**Vendor** means any individual or entity seeking to or doing business



with Nassau County within the scope of this Code, including, without limitation, contractors, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and employees of the foregoing, as well as any subcontractors, subconsultants and suppliers at all lower tiers.

## **Chapter 2: LIMITATIONS AND REPORTING OF CONTACTS WITH NASSAU COUNTY**

### **Section 2.01 Designated Point(s) of Contact**

Each procurement solicitation issued by Nassau County will identify the Designated Point(s) of Contact for that solicitation as required by the State Procurement Lobbying Law. Once the Designated Point(s) of Contact is/are established, the Vendor and any person or entity acting on the Vendor's behalf, including without limitation, those providing compensated or uncompensated lobbying, advocacy, consulting or other services should ensure that its contacts with Nassau County are in compliance with the requirements of the State Procurement Lobbying Law.

## **Chapter 3: GIFTS OR CONTINGENT FEES**

### **Section 3.01 Zero Tolerance**

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. Additionally, no Vendor may accept a gift from a Nassau County Employee.

This Zero-Tolerance Policy applies regardless of actual intentions. In other words, even if a Gift does not, or is not intended to, influence an action or decision by a Nassau County Employee, it is prohibited by this Code.

### **Section 3.02 Personal Relationships**

Notwithstanding the foregoing, if a Vendor has a pre-existing family or personal relationship with the Employee, a Gift that is wholly unconnected with the Employee's duties on behalf of Nassau County is



not necessarily prohibited.

In determining whether the giving of an item was motivated by personal rather than business concerns, the following factors are considered:

- (a) the history of the relationship between the donor and the recipient, including but not limited to the mutuality of gift giving;
- (b) whether the item was paid for by the donor.

The giving of an item shall not be considered to be motivated by a family or personal relationship if the donor seeks to charge or deduct the value of the item as a business expense or seeks reimbursement from a client.

However, regardless of the family or personal relationship between a Vendor and an employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the employee in the performance of his or her official duties.

### **Section 3.03 Contingent Fees**

The Vendor will not employ or retain any individual or entity for the purpose of soliciting or securing a Nassau County contract upon any agreement or understanding for a commission, percentage, brokerage, or fee that is contingent or dependent upon the outcome of the procurement.

## **Chapter 4: NEGOTIATIONS FOR FUTURE EMPLOYMENT**

### **Section 4.01 Restrictions During the Procurement Process**

Vendors shall not discuss future employment with Participating Nassau County Employees or their Family Members from the date the procurement is advertised or solicited through 30 days following the date that the procurement is awarded, even if a Participating Nassau County Employee contacts the Vendor regarding employment. Questions regarding whether a particular Nassau County employee is a Participating Nassau County Employee for a specific



procurement should be directed to the Designated Point of Contact for the procurement.

#### **Section 4.02 Restrictions Post Award**

Vendors are prohibited from offering or discussing an employment opportunity with a Nassau County Employee or his or her Family Members before whom the Vendor has or expects to have a pending specific matter including, but not limited to, negotiations, performance evaluation, task order selection, approval of a voucher or invoice, or approval of or agreement to a contract amendment, change order, or deviation or waiver until:

- (i) 30 days from the time the matter before the Employee is closed, or
- (ii) 30 days from the time the Employee has no further involvement with the matter because of recusal or reassignment.

### **Chapter 5: CONFLICT OF INTEREST**

#### **Section 5.01 Financial Interest**

Neither the Vendor, nor any director, officer, principal, owner, or partner thereof, as the case may be, may have a 10% or greater interest, nor shall the Vendor, nor any director, officer, principal, owner, or partner thereof, acquire a 10% or greater interest, either directly or indirectly, in any company or firm that would conflict in any manner or degree with the performance of the Nassau County contract.

The Vendor will not permit an employee having a 10% or greater interest, either directly or indirectly, in any company or firm that would conflict in any manner or degree with the performance of the Nassau County contract to be employed in the performance of the Nassau County contract.

#### **Section 5.02 Personal Business Dealings**

Neither the Vendor, nor any director, officer, principal, owner, or partner thereof, may have a non-County business dealing with a



## Vendor Code of Ethics

Participating Nassau County Employee where it can be reasonably inferred that the purpose of the business dealing, at least in part, is to influence the Participating Nassau County Employee's action on a pending County matter.

### **Section 5.03 Disclosure and Cooperation**

The Vendor shall disclose immediately to the County any real or potential conflict of interest of which it becomes aware. This obligation is ongoing and shall last through the completion of performance of the contract. The Vendor shall provide to Nassau County, at the County's request and upon such forms as may be furnished by Nassau County, a disclosure of organizational, financial, contractual or other affiliations with any organization or entity that has interests that may be substantially affected by the procurement solicitation or award. The Vendor shall fully cooperate in any inquiry or investigation undertaken by Nassau County to determine whether any such affiliations present a conflict of interest, or whether any other provision of this Code has been violated. The Vendor shall fully cooperate with audits, investigations, examinations and reviews by the Nassau County Inspector General conducted pursuant to section 187 of the Nassau County Charter.

### **Section 5.04 Confidential Information**

At no time shall any Vendor who obtains confidential or proprietary Nassau County information in the course of doing or seeking to do business with the County disclose any such information to any person not authorized by Nassau County to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to Nassau County.

If the Vendor receives from any source confidential or proprietary Nassau County information prior to the award of a resulting contract and, where applicable, approval by the County Legislature, without the explicit approval of the Designated Point of Contact, the Vendor shall immediately so notify the Designated Point of Contact.

Nassau County confidential or proprietary information includes, but is not limited to, internal cost estimates and proposals submitted by other Vendors.



**Section 5.05 Prohibition Regarding Bidding by Participants in Procurement Development**

No Vendor who participates in the development of a scope of work, solicitation documents, assessment criteria, contractual instruments or technical specifications may participate as a bidder, sub-bidder, proposer or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that Vendor an unfair advantage over other bidders or proposers on that procurement. This prohibition may be waived in writing by the County Chief Procurement Officer upon a showing of good cause.

**Chapter 6: FORMER NASSAU COUNTY EMPLOYEES**

**Section 6.01 Appearance Before Former Agency-Two Year Bar**

Except as provided for in Section 2218(8) of the Nassau County Code of Ethics, the Vendor will not permit a former Nassau County Employee to appear or practice before any Nassau County agency, either prior to award or in the performance of a Nassau County contract, for a period of two years after termination of the Nassau County Employee's services with the County.

**Section 6.02 Appearance Before Former Agency-Life Time Bar**

Except as provided for in Section 2218(8) of the Nassau County Code of Ethics, the Vendor will not permit a former Nassau County Employee to appear, practice, communicate or otherwise render services before the agency that employed the officer or employee or any other agency of Nassau County, either prior to award or in the performance of an agency's contract in relation to any case, proceeding, application or transaction with respect to which such former officer or employee was directly concerned and in which he or she personally participated, or which was under his or her active consideration during the period of his or her employment. This provision is a lifetime bar on projects that the former Nassau County Employee previously worked on while employed by the County.





## Chapter 7: NON-COLLUSION

### Section 7.01 Independent Bid Assessment

The Vendor will calculate the price(s) contained in any bid or proposal independently, without collusion, consultation, communication, or agreement with any competing Vendor for the purpose of restricting competition.

### Section 7.02 Non-Communication of Bid

Unless otherwise required by law, the price(s) which the Vendor quotes in its bid or proposal will not knowingly be disclosed by the Vendor, directly or indirectly, to any competing Vendor prior to the closing date for bids or proposals.

### Section 7.03 Bid Submission

The Vendor will not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

## Chapter 8: DISTRIBUTION AND CERTIFICATION

### Section 8.01 Distribution of Vendor Code of Ethics and Vendor's Participating Employee Acknowledgements

As a condition of being considered for the award of any contract above the County's small purchase threshold of \$10,000, the Vendor will be required to distribute copies of the Nassau County Vendor Code of Ethics to all Participating Employees prior to any of those employee's participation in the procurement. The Code may be distributed either in hard copy or electronically as a separate PDF.

Additionally, as a condition of being considered for the award of any contract above the County's small purchase threshold, the Vendor will be required to obtain an acknowledgement from each of its Participating Employees ("Participating Employee Acknowledgements") that they have received, read, understand, and will comply with the Nassau County Vendor Code of Ethics.



## Vendor Code of Ethics

The Vendor's responsibility for distributing copies of the Nassau County Vendor Code of Ethics and obtaining such signed Participating Employee Acknowledgements is ongoing until completion of performance of the contract and shall be retained for the same period as the Vendor is required to retain other contract documents in accordance with their contract with the County.

Receipt and retention of Participating Employee Acknowledgments by the Vendor shall be subject to audit by Nassau County.

### **Section 8.02 Vendor Certifications**

The vendor by signing the final contract thereby certifies and attests to the following:

- (a) The Vendor has been provided with a copy of the Nassau County Vendor Code of Ethics and will comply with all of the provisions of the Code;
- (b) All of its Participating Employees during the course of procurement or contract have been provided with a copy of the Nassau County Vendor Code of Ethics prior to any of those employees' participation in the procurement;
- (c) All Participating Employees have completed the acknowledgement required by Section 8.01 of this Code;
- (d) The Vendor will retain all of the signed Participating Employee Acknowledgements for the same period as the Vendor is required to retain other contract documents in accordance with their contract with the County;
- (e) The Vendor will continue to distribute the Nassau County Vendor Code of Ethics, obtain signed Participating Employee Acknowledgements as new Participating Employees are added or changed during the contract period, and retain all of the signed acknowledgements for the same period as the Vendor is required to retain other contract documents in accordance with their contract with the County.



**Section 8.03 Subcontractor Certifications**

As a condition of being considered for the award of any contract above the County's small purchase threshold, the Vendor will obtain certifications executed by authorized officials from all of its lower tier subcontractors, subconsultants and suppliers (as well as from any other subcontractors, subconsultants and suppliers from whom that Vendor is soliciting or has received proposals for work on a Nassau County contract) whose employees have communicated or may communicate with Nassau County Employees. This obligation is ongoing and shall last through the completion of performance of the contract. Receipt and retention of lower tier certifications by the Vendor shall be subject to audit by Nassau County.



## Chapter 9: PENALTIES

### Section 9.01 Responsibility Determination

For violation of any provision of the Nassau County Vendor Code of Ethics, Nassau County may avail itself of every remedy in law or equity, or as agreed to by parties in any contract, including but not limited to declaring the Vendor non-responsible or in material breach of the contract.

### Section 9.02 Civil/Criminal Penalties

Additionally, violation of the Nassau County Vendor Code of Ethics or a provision thereof may subject the Vendor to criminal or civil penalties under State or Federal law.

## Chapter 10: REPORTING OBLIGATION

### Section 10.01 Reporting Gift Requests

Notwithstanding the provisions of Chapter 4 above, the Vendor is obligated to immediately report to Nassau County's Inspector General and the County Chief Procurement Officer, any and all requests made to the Vendor by any Nassau County Employee for a Gift.

### Section 10.02 Reporting Material Changes

The Vendor is under a continuing obligation to report any change in circumstances that materially affects any prior report to Nassau County to Department of Chief Contracting Officer, including but not limited to disclosure of conflicts of interest and representations made in the Contractor Responsibility Form.

### Section 10.03 Reporting Violations and Overpayments

The Vendor is obligated to timely report in writing to Nassau County's Inspector General, in connection with the award, performance or closeout of the Nassau County contract or subcontract, any credible evidence of significant overpayments on the contract or that a principal, employee, agent or subcontractor has committed a



violation of law involving fraud, conflict of interest, bribery or gratuities.

## **Chapter 11: PROHIBITION ON RETALIATION**

### **Section 11.01 Prohibition**

To facilitate the reporting obligations under Chapter 10, this code strictly forbids all Vendors and Vendors' Employees from taking any Retaliatory Action against individuals who make such reports.



**CERTIFICATION REGARDING  
DISTRIBUTION OF  
NASSAU COUNTY VENDOR CODE OF  
ETHICS**

Bid/Proposal No.: \_\_\_\_\_

Project Description: \_\_\_\_\_

The prospective lower tier participant \_\_\_\_\_ (subcontractor, subconsultant, or supplier name) hereby certifies, by submission of this bid or proposal to \_\_\_\_\_ [prime contractor] in connection with the Nassau County bid or proposal number referenced above, to the best of its knowledge and belief, that all officers and personnel who have communicated or may communicate with Nassau County employees during the course of the procurement and through the completion of performance of the contract have been provided with a copy of the Nassau County Vendor Code of Ethics prior to each of these employee's participating in the procurement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official



Vendor Code of Ethics

**PARTICIPATING EMPLOYEE  
ACKNOWLEDGEMENT REGARDING NASSAU  
COUNTY VENDOR CODE OF ETHICS**

Company: \_\_\_\_\_

Bid/Proposal No.: \_\_\_\_\_

I, \_\_\_\_\_, acknowledge that I have received and read the Nassau County Vendor Code of Ethics on \_\_\_\_\_ and that I understand it and will comply with this Code in my participation in procurements between \_\_\_\_\_ (Vendor name) and Nassau County.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_ Signature of Employee

\_\_\_\_\_ Name and Title of Employee

Nassau County Office of \_\_\_\_\_  
Laura Curran - County Executive \_\_\_\_\_ – Director of \_\_\_\_\_

**REQUEST FOR PROPOSALS**

***[Name of RFP]***

RFP# [obtained from Information Technology]

Issue Date:

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**Nassau County**  
Long Island, New York

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- B. Anticipated Proposal Schedule
- C. Scope of Services
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- E. Mandatory Proposal Response Requirements
- F. Proposal Submission Instructions
- G. Proposal Evaluation Criteria
- H. General Information
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Request for Proposal (RFP)

**A. Introduction**

Nassau County, New York (the "County") is currently seeking proposals from qualified individuals and entities authorized to do business in the State of New York, to provide \_\_\_\_\_.  
The purpose of the RFP is to provide Nassau County with proposals and recommendations for \_\_\_\_\_.

[Further explanation of RFP can be inserted here]

Nassau County is committed to a policy of equal opportunity and does not discriminate against vendors on the basis of age, sex, sexual orientation, race, color, creed, religion, ethnicity, national origin, disability, marital status, familial status, veteran status or any other basis protected under federal, state, and local laws, regulations, and ordinances.

**B. Anticipated Proposal Schedule**

- RFP Issue Date
- RSVP for Proposers' Conference, if necessary
- Proposers' Conference, if necessary
- Proposal Due Date
- Oral Presentation, if necessary
- Award Date

Dates indicated above are subject to change at the sole discretion of the County.

THE PROPOSER SHOULD PROVIDE A PROPOSAL IN APPENDIX B WHICH MEETS THE SCOPE REQUIREMENTS SET FORTH BELOW. THE COUNTY WILL REVIEW SINGLE OR MULTIPLE PROPOSALS FROM AN INDIVIDUAL OR ENTITY.

**C. Scope of Services**

The Scope of Services ("Scope") outlined below has been established for the purpose of achieving and implementing program goals and objectives described in this document. Although the Scope is intended to serve as a reference in the preparation of the proposal, forthcoming proposals may offer additional services which support the goals of this job title and compensation review and analysis. *[to be inserted by whoever is creating RFP]*

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**D. Contract Term**

It is the intent to award a contract for a \_\_\_\_ year period *[if desirous of renewing contract, may use this language:* with the option to renew for an additional \_\_\_\_ year period, for a possible total term of \_\_\_\_

years], subject to the County's right of early termination as provided in the contract. The decision to renew the contract(s) will be at the sole discretion of the County.

#### **E. Mandatory Proposal Response Requirements**

All proposals must state the period for which the proposal shall remain in effect (i.e., how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 (one hundred eighty) days from the proposal date.

All Proposals must contain the following:

1. Cost Proposal as described in Appendix A.
2. Proposed approach to the Scope of Work as described in Appendix B containing the proposer's Proposal.
3. On or before the RFP Proposal Due Date, the proposer is required to submit the following disclosure forms (the "Disclosure Forms"), which should be submitted in the Nassau County Vendor Portal at:

<https://apex5.nassaucountyny.gov/ords/f?p=312>

- a. A duly completed and verified Business History Form, together with a current certified or verified financial statement and/or other commercially reliable written evidence of the proposer's credit, financial standing and capacity to perform in accordance with the terms of the Contract.
- b. All officers, and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer shall complete and verify the Principal Questionnaire Form.
- c. The County of Nassau Consultant's, Contractor's and Vendor's Disclosure Form.
- d. Additionally, if the proposer utilizes the services of any individual or organization for the purposes of conducting lobbying activities and is awarded the Contract, the successful proposer will be required to provide a copy of the Lobbyist Registration and Disclosure Form, completed and verified by that individual/organization.

#### **PLEASE NOTE:**

- If a proposer has previously submitted the Disclosure Forms in the Nassau County Vendor Portal, the proposer must ensure that the forms on file in the Portal are current, accurate, and have been recertified within three (3) months prior to the RFP Proposal Due Date. The Proposer must also ensure that their response to question 7, and its subparts, on the Consultant's, Contractor's, and Vendor's Disclosure Form is provided in relation to the specific solicitation under consideration.
4. Living Wage Law Certificate of Compliance, attached as Appendix L.
  5. The Proposer's Exceptions to the RFP Requirements, if any.
  6. All submissions must be signed on the designated signature line by an officer or authorized agent of the proposing party.
  7. Additional information that you believe pertinent to the County's requirements.
  8. Statement proposer has registered with the County as a vendor.

**F. Proposal Submission Instructions**

Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate, and reliable presentation. For ease of review, the proposals must follow the outline in the section of this Request For Proposal (“RFP”) titled **Mandatory Proposal Response Requirements**. Each response should be clearly numbered, and the full question listed.

The proposals must be signed by an individual who is authorized to bind the proposer to all commitments made in the proposal. The original and ( ) copies of the proposal, together with all attachments, must be submitted to the County in a sealed opaque envelope no later than 4:00 p.m. EST on . No telegraphic or facsimile proposals will be accepted. Any late proposals will be returned unopened. **Proposals received after the above date and time will not be considered.** The County is under no obligation to return proposals.

It is each Proposer’s responsibility to carefully review all the requirements of this RFP, including the scope of work, the specifications and terms and conditions. It is further the proposer’s responsibility to ask questions, request clarifications, or otherwise advise the County if any language, specifications or requirements of this RFP appear to be ambiguous, contradictory, or to inadvertently restrict or limit the vendors that could meet the requirements of this RFP to a single source.

If a proposer takes exception to any requirement of this RFP, the Proposer must clearly set forth the exception in its proposal, referencing the affected RFP section, paragraph and page. The Proposer must set forth the reason(s) for the exception and indicate what (if any) alternative is being offered by the Proposer. The County shall determine (in its sole discretion) the acceptability of any proposed exception(s). Where the County rejects a proposed exception, the County may offer the vendor an opportunity to withdraw its exception and propose an alternative. However, even where the County does not reject a proposed exception to the RFP prior to the issuance of a Notice of Intent to Award to a Proposer, the County reserves the right to negotiate with the Proposer regarding any such exceptions. Regardless of whether or not the County rejects proposed exceptions to the RFP, such exceptions will be considered by the County in evaluating the completeness and adequacy of the proposal. Proposers shall be deemed to have accepted all requirements of this RFP to which they have not specifically and clearly stated an exception in their proposal.

The County is under no obligation to respond to any question, inquiry or assertion that is not received in writing. Interested parties may contact the authorized contact person listed below by telephone to advise that a fax transmission has been sent to the above number. Violation of these provisions may result in immediate disqualification. Proposers will submit all proposals and direct all responses, questions, and any other communications to the following authorized contact person:

\_\_\_\_\_  
**Title**  
**Nassau County Department of \_\_\_\_\_**  
**Address**  
**Mineola, New York 11501**  
**Telephone: (516) 571-**

No contact with any other County personnel other than the authorized contact person is allowed until such times as an award (or awards) has (have) been made.

**G. Contract Proposal Evaluation Criteria** [use whatever criteria best fits your RFP, but can use these as a base if suitable]

Proposal elements, as described above, will be reviewed and evaluated for completeness and responsiveness according to pre-determined standards and selection criteria. Proposals will be deemed responsive only if the Vendor responds to and meets all of the requirements of this RFP. Vendors may be invited for interviews to discuss project requirements and proposal elements in more detail should the selection committee request such. The County reserves the right to award all or any part of this project, and to waive any technical irregularities or omissions, or to cancel this RFP and solicit new proposals if, in the County's sole judgment, the best interests of the County will be served. The selection committee will evaluate each proposal and use the following for scoring each submission:

**Contract Requirements and Proposed Solution** \_\_\_\_\_%

Overall responsiveness of the proposal;  
Demonstration of a clear understanding of the requirements portion of the RFP;  
Clear description of the scope of work needed to satisfy the defined RFP requirements,  
Acceptability and efficacy of proposed analysis, management and implementation methods and procedures and supporting systems for ongoing project management and implementation support, description of recommendations and alternative approaches that the County might use to improve its management process including rationale for the recommendations or alternative approaches.

**Vendor Profile: Organization, Capacity, Staffing, Resumes** \_\_\_\_\_%

Complete substantiation of the organizational structure and capacity to provide and support the proposed services defined in Section 1, Number 2, Scope of Services, resumes of the proposed personnel (quality / demonstrated skills of proposed personnel); clear description of potential resource utilization methods and approach.

**Related Experience** \_\_\_\_\_%

Prior public sector experience, project management and implementation qualifications and related experiences of the Vendor including references, organizational and technical capacity, and outcome/results of services provided to other similar clients of similar size; comprehensive description of why the Vendor can perform the tasks defined in the RFP.

**Cost of Overall Project** \_\_\_\_\_%

Total cost to the County.

The County will consider any other relevant factors as determined by the selection committee.

**H. General Information**

1. **Incurring Cost.** The County shall not be liable for any costs incurred in the preparation and production of a proposal in response to this RFP or for any work performed prior to the issuance of a contract.
2. **Rejection of Proposals.** This RFP does not commit the County to award a contract, or to procure, or to contract for services or supplies. Notwithstanding any other provisions of this RFP,

the County reserves the right to award this contract to the vendor(s) that best meet the requirements of the RFP, and not necessarily to the lowest proposer. The County reserves the right to accept or reject any or all proposals received as a result of this request; to negotiate with all qualified sources; or to cancel in part or in its entirety this RFP if it is in the interests of the County to so do.

The County may require the Proposer selected to participate in negotiation and to submit any price, technical, or other revisions, or their proposals as may result from negotiations.

3. **Addenda to Request for Proposals.** Amendments to this RFP may be necessary prior to the closing date and will be furnished by mail to all prospective Proposers who have requested these materials.
4. **Contract Negotiations.** The County intends to enter into contract negotiations with the firm or firms selected by the RFP Evaluation Committee, who shall be required to enter into a written contract with the County in a form approved by legal counsel for the County. The contract usually includes, without limitation, the standard clauses set forth in Appendix "E" attached hereto. This RFP and the proposal, or any part thereof, may be incorporated into and made a part of the contract. The contract may contain provisions not contained herein.

The County reserves the right to negotiate the terms and conditions of the contract with the selected proposer(s), if any. These negotiations could include all aspects of services and fees. Neither the selection of a vendor nor the negotiation of the contract with such vendor(s) shall constitute the County's acceptance of the proposal or a binding commitment on behalf of the County to enter into a contract with such vendor(s), as any binding arrangement must be set forth in the contract signed by both parties and is subject to all requisite approvals.

5. **Additional Information.** The County may award a contract based upon offers received without discussion of such offers with the Proposers. Each offer, therefore, should be submitted in the most favorable terms that the Proposers can offer the County from a price and technical standpoint. However, the County reserves the right to request additional data or oral discussions or presentations in support of written proposals from any and all of the Proposers. In addition, the County reserves the right to make on-site visits to the Proposer's place of business to assess and/or evaluate Proposer's qualifications.
6. **Disclosure of proposal contents.** The County will withhold proposals submitted under this RFP from disclosure, unless otherwise required by law, including, but not limited to, the Freedom of Information Law ("FOIL"). Proposers shall indicate in their proposals any information they submit that they feel is exempted from disclosure under FOIL. In the event that the County determines that information is required by applicable law to be disclosed, the County will endeavor to notify the Proposer in advance of such disclosure to enable the Proposer to take such action as it deems appropriate. Copies of executed contracts are not exempt from FOIL.
7. **Independent Price Determination:** By submission of its offer, the Proposers certify (and in the case of a joint offer, each party thereto certifies as to its own organization) that, in connection with procurement:
  - A. The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matters relating to such prices with any other proposer or competitor; and
  - B. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Proposers prior to award, directly or indirectly, to any other Proposer or competitor; and

- C. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition; and
  - D. No elected or appointed official or employee of the County shall benefit financially or materially from this contract. The County may terminate this contract if gratuities were offered or given by the Proposer or their agency to any such official or employee.
8. **Ownership of Information:** All materials submitted in response to this Request for Proposals will become the property of the County.
  9. **Examination of Records:** In submitting a proposal, the successful Proposer agrees that the County shall have access to and the right to examine directly all pertinent documents, papers and records of the Proposer and/or any sub-proposer as related to any contract and/or subcontract resulting from this RFP until six (6) years after final payment has been made pursuant to any contract awarded as a result of the County's acceptance of proposal.
  10. **Subcontracting:** The Proposer will be responsible for the entire contract performance. The Proposer must indicate in the RFP if it intends to use a sub-contractor for any part of the work. If so, the Proposer shall identify each sub-contractor by name, business address and expertise, and must include the name(s) of the principal(s) of the subcontracting entity. A full description of the tasks to be performed by the sub-contractor must be included. The Proposer will not be permitted to subcontract any part of the contract or any of the rights and obligations thereunder without the prior written approval of the County.
  11. **Negotiated Changes:** In the event that negotiated changes occur after the awarding of the contract, the same pricing policies called for in the original contract will remain in effect.
  12. **Disclaimer:** The County and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the County does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.
  13. **M/WBE, SDVOB and DBE Participation:** The County encourages the participation of certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), Minority or Women-Owned Business Enterprises ("M/WBE"), and Disadvantaged Business Enterprises ("DBE") in the RFP process. A Proposer that is certified by New York State or the County as a SDVOB, M/WBE, and/or DBE should include this information in their proposal. For more information regarding the County's SDVOB, M/WBE, or DBE programs, please visit the Nassau County Office of Minority Affairs website.

#### **I. General Conditions for Proposers**

1. The Proposers will be required to pay its employees a "living wage" in compliance with Nassau County Local Law No. 1-2006 (the "Living Wage Law"), if applicable, and also to pay the prevailing wage rate as published by the New York State Department of Labor, if applicable, and comply with all applicable New York State Labor Law.
2. Proposer is bound by and shall comply with the terms of Appendix EE to the Standard Clauses for Nassau County Contracts, attached hereto as Appendix E, which are attached hereto and

hereby made a part hereof, if the proposers would be considered "county contractors", as defined in those exhibits, if awarded this contract.

3. The contract shall provide that in the event of any material misrepresentation by the Proposer contained in its proposal, County shall have the right to immediately terminate the agreement. It shall also provide that in the event the Proposer or any of its principals are convicted of a felony during the term of the agreement, that the County shall also have the right to terminate the agreement.

**J. Additional Demonstrative Materials**

Parties are encouraged to provide as much additional material and detail as possible to completely describe and demonstrate the Proposal.

**K. Award of Contract**

The County shall select a firm by means of a Notice of Award issued by the RFP Evaluation Committee. Neither the selection of a firm nor the issuance of a Notice of Award shall constitute the County's acceptance of the proposal or a binding commitment on behalf of the County to enter into a contract with the firm, as any binding arrangement must be set forth in definitive documentation signed by both parties and shall be subject to all requisite approvals.

**L. Protest Policy**

As indicated in Section F, all questions or concerns regarding this RFP must be directed to the designated contact person. If a Proposer believes that a concern has not been satisfactorily addressed, it may request a copy of the Vendor Protest Procedure from the designated contact person.



**APPENDIX A**  
**COST PROPOSAL**

[this is a sample, needs to be created for specific RFP scope of work]

**Proposed Cost Breakdown**

Task	Partner		Manager		Analyst		Total Hours	Subtotal Hourly Costs	Estimated Expenses	Total Cost
	Hours	Billing Rate	Hours	Billing Rate	Hours	Billing Rate				
1. Field Data										
2. Analysis										
3. Final Report										
<b>Totals</b>										

The undersigned hereby certifies their compliance with the following:

“NON-COLLUSIVE PROPOSAL CERTIFICATION”

By submission of this Proposal, each proposer and each person signing on behalf of any other proposer certifies, and in the case of a joint Proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- A. The prices of this Proposal have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor; and
- B. Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
- C. No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restricting competition.
- D. The undersigned has carefully examined the Proposal and Contract Documents and agrees to perform this contract and to provide all services, labor, material and equipment necessary for this contract.

**SUBMITTED BY:** \_\_\_\_\_  
(Signature)

**PRINT NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**APPENDIX B**  
**PROGRAM DESCRIPTION AND STAFFING**

*[sample, needs to be adjusted to particular RFP]*

Please provide a complete Proposal, including the following information:

- a. Staffing: Bios of firm principals as well as staff expected to be assigned to this project.
- b. Detail prior experience in the area of [service].
- c. Detail prior experience with public sector clients (similar size and scope).
- d. Detailed cover letter on the firm's letterhead indicating EIN number and the name of the parties authorized to discuss and/or enter into negotiations with Nassau County with respect this proposal.

(USE ADDITIONAL SHEETS IF NECESSARY)

**APPROVED AND SUBMITTED BY:** \_\_\_\_\_  
(Signature)

**PRINT NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**APPENDIX E**  
**STANDARD CLAUSES FOR NASSAU COUNTY CONTRACTS**

**1. Independent Contractor.** The Contractor is an independent contractor of the County. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person with the authority to commit the County to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

**2. No Arrears or Default.** The Contractor is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

**3. Compliance with Law.** (a) Generally. The Contractor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, human rights, a living wage, disclosure of information and vendor registration in connection with its performance under this Agreement. In furtherance of the foregoing, the Contractor is bound by and shall comply with the terms of Appendix EE attached hereto and with the County's registration protocol. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Nassau County Living Wage Law. Pursuant to LL 1-2006, as amended, and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, the Contractor agrees as follows:

- (i) Contractor shall comply with the applicable requirements of the Living Wage Law, as amended;
- (ii) Failure to comply with the Living Wage Law, as amended, may constitute a material breach of this Agreement, such breach being determined solely by the County. Contractor has the right to cure such breach within thirty days of receipt of notice of breach from the County. In the event that such breach is not timely cured, the County may terminate this Agreement as well as exercise any other rights available to the County under applicable law.
- (iii) It shall be a continuing obligation of the Contractor to inform the County of any material changes in the content of its certification of compliance, attached to this Agreement as Appendix L, and shall provide to the County any information necessary to maintain the certification's accuracy.

(c) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement remains the sole property of the County and shall be used and disclosed solely for the purpose of performance and administration of the Agreement or as required by law. The Contractor acknowledges that Contractor Information in the County's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the County shall make reasonable efforts to notify the Contractor of such request

prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate.

(d) Prohibition of Gifts. In accordance with County Executive Order 2-2018, the Contractor shall not offer, give, or agree to give anything of value to any County employee, agent, consultant, construction manager, or other person or firm representing the County (a "County Representative"), including members of a County Representative's immediate family, in connection with the performance by such County Representative of duties involving transactions with the Contractor on behalf of the County, whether such duties are related to this Agreement or any other County contract or matter. As used herein, "anything of value" shall include, but not be limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, currency of any kind, or any other gifts, gratuities, favorable opportunities or preferences. For purposes of this subsection, an immediate family member shall include a spouse, child, parent, or sibling. The Contractor shall include the provisions of this subsection in each subcontract entered into under this Agreement.

(e) Disclosure of Conflicts of Interest. In accordance with County Executive Order 2-2018, the Contractor has disclosed as part of its response to the County's Business History Form, or other disclosure form(s), any and all instances where the Contractor employs any spouse, child, or parent of a County employee of the agency or department that contracted or procured the goods and/or services described under this Agreement. The Contractor shall have a continuing obligation, as circumstances arise, to update this disclosure throughout the term of this Agreement.

(f) Vendor Code of Ethics. By executing this Agreement, the Contractor hereby certifies and covenants that:

- (i) The Contractor has been provided a copy of the Nassau County Vendor Code of Ethics issued on June 5, 2019, as may be amended from time to time (the "Vendor Code of Ethics"), and will comply with all of its provisions;
- (ii) All of the Contractor's Participating Employees, as such term is defined in the Vendor Code of Ethics (the "Participating Employees"), have been provided a copy of the Vendor Code of Ethics prior to their participation in the underlying procurement;
- (iii) All Participating Employees have completed the acknowledgment required by the Vendor Code of Ethics;
- (iv) The Contractor will retain all of the signed Participating Employee acknowledgements for the period it is required to retain other records pertinent to performance under this Agreement;
- (v) The Contractor will continue to distribute the Vendor Code of Ethics, obtain signed Participating Employee acknowledgments as new Participating Employees are added or changed during the term of this Agreement, and retain such signed acknowledgments for the period the Contractor is required to retain other records pertinent to performance under this Agreement; and
- (vi) The Contractor has obtained the certifications required by the Vendor Code of Ethics from any subcontractors or other lower tier participants who have participated in procurements for work performed under this Agreement.

**4. Minimum Service Standards.** Regardless of whether required by Law:

(a) The Contractor shall, and shall cause Contractor Agents to, conduct its, their activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) The Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Contractor operates. The Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

## **5. Indemnification; Defense; Cooperation.**

(a) The Contractor shall be solely responsible for and shall indemnify and hold harmless the County, its officers, employees, and agents (the "Indemnified Parties") from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of the Contractor or a Contractor Agent, regardless of whether taken pursuant to or authorized by this Agreement and regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of the County.

(b) The Contractor shall, upon the County's demand and at the County's direction, promptly and diligently defend, at the Contractor's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which the Contractor is responsible under this Section and the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The Contractor shall, and shall cause Contractor Agents to, cooperate with the County in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement.

(d) The provisions of this Section shall survive the termination of this Agreement.

## **6. Insurance.**

(a) Types and Amounts. The Contractor shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name "Nassau County" as an additional insured and have a minimum single combined limit of liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than one million dollars (\$1,000,000) per claim, (iii) compensation insurance for the benefit of the Contractor's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law, and (iv) such additional insurance, including, without limitation, builder's all risk, if applicable, automobile liability insurance and umbrella liability insurance, as the County may from time to time specify.

(b) Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by the Contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed or authorized to do business in New York State and acceptable to the County; and (ii) in form and substance acceptable to the County. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The Contractor shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be

carried by the Contractor under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the County Attorney's Office. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Contractor shall provide written notice to the County Attorney's Office of the same and deliver to the County Attorney's Office renewal or replacement certificates of insurance. The Contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the County reserves the right to consider this Agreement terminated as of the date of such failure.

## **7. Assignment; Amendment; Waiver; Subcontracting**

(a) This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the County Executive or their duly designated deputy (the "County Executive"), and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

## **8. Work Performance Liability**

The Contractor is and shall remain primarily liable for the successful completion of all work in accordance this Agreement irrespective of whether the Contractor is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the County.

**9. Termination**. (a) Generally. This Agreement may be terminated (i) for any reason by the County upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the County immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the County and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

(b) By the Contractor. This Agreement may be terminated by the Contractor if performance becomes impracticable through no fault of the Contractor, where the impracticability relates to the Contractor's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by the Contractor delivering to the commissioner or other head of the Department (the "Commissioner"), at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible), a notice stating (i) that the Contractor is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Contractor's right to terminate

under this subsection. A copy of the notice given to the Commissioner shall be given to the Deputy County Executive who oversees the administration of the Department (the "Applicable DCE") on the same day that notice is given to the Commissioner.

(c) Contractor Assistance upon Termination. In connection with the termination or impending termination of this Agreement the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the County (including those set forth in other provisions of this Agreement) to assist the County in transitioning the Contractor's responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

**10. Accounting Procedures; Records.** The Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Contractor is a non-profit entity, must comply with the accounting guidelines set forth in the applicable provisions of the Code of Federal Regulations, 2 C.F.R. Part 200, as may be amended. Such Records shall at all times be available for audit and inspection by the County Comptroller, the County Attorney's Office, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

**11. Limitations on Actions and Special Proceedings Against the County.** No action or special proceeding shall lie or be prosecuted or maintained against the County upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Applicable DCE for adjustment and the County shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Applicable DCE under this Section to each of (i) the Department and the (ii) the County Attorney (at the address specified above for the County) on the same day that documents are sent or delivered to the Applicable DCE. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the County.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

**12. Consent to Jurisdiction and Venue; Governing Law.** Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

**13. All Legal Provisions Deemed Included; Severability; Supremacy; Construction.**

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or

referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) In the event of a conflict between the terms and conditions of the contract, including any and all attachments thereto and amendments thereof, and the terms of this Appendix A, the terms of this Appendix A shall control.

(d) Each party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either party as drafter.

**14. Administrative Service Charge.** The Contractor agrees to pay the County an administrative service charge of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for the processing of this Agreement pursuant to Ordinance Number 74-1979, as amended by Ordinance Numbers 201-2001, 128-2006, and 153-2018. The administrative service charge shall be due and payable to the County by the Contractor upon signing this Agreement.

<u>Value of contract:</u>	<u>Administrative fee:</u>
\$0 - \$10,000	\$0
Over \$10,000 - \$50,000	\$160
Over \$50,000 - \$ 100,000	\$266
Over \$100,000	\$533

**15. Executory Clause.** Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County and other governmental approvals have been obtained, including, if required, approval by the County Legislature, and (ii) this Agreement has been executed by the County Executive (as defined in this Agreement).

(b) Availability of Funds. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the State and/or federal governments, then beyond funds available to the County from the State and/or federal governments.



## Appendix EE

### Equal Employment Opportunities for Minorities and Women

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

(e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

(f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.

- (g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.
- (h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.
- (i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.
- (j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.
- (k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.
- (l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:
  - a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
  - b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.

- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term "Best Efforts Checklist" shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term "County Contract" shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition,

construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term "County Contract" does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term "County Contractor" means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term "County Contractor" shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE "Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises" shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor's affidavit with a notary's signature and stamp shall be required as part of the documentation.
- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blueprints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of

M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation.

- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation.
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term "Executive Director" shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term "Subcontract" shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term "Subcontractor" shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

Contract Appendix L  
Certificate of Compliance

In compliance with Local Law 1-2006, as amended, the Proposer/Bidder hereby certifies the following:

1. The chief executive officer of the Proposer/Bidder is:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Telephone Number)

2. The Proposer/Bidder agrees to comply with the requirements of the Nassau County Living Wage Law, and with all applicable federal, state and local laws.

3. In the past five years, Proposer/Bidder \_\_\_\_\_ has \_\_\_\_\_ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed by the Proposer/Bidder, describe below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action \_\_\_\_\_ has \_\_\_\_\_ has not been commenced against or relating to the Proposer/Bidder in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

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5. Proposer/Bidder agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

\_\_\_\_\_  
Dated  
Signature of Chief Executive Officer

\_\_\_\_\_  
Name of Chief Executive Officer

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
**Notary Public**