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Advisory Report

Effectiveness of Low Vendor Response Surveys

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"Good government is everybody's business"

Background

Obtaining best value is an important goal of public procurement. In many cases, best value is realized by selecting the responsive bid offering the lowest price. In other cases, best value is the proposal offering the most advantageous combination of cost, quality, and efficiency.¹ Maximizing the pool of potential vendors for a given procurement is an important step in achieving best value. It is axiomatic that increasing competition can result in lower cost to the purchaser. In addition to increasing the opportunity to obtain favorable pricing, greater competition also gives the County more options regarding the qualifications and proposals of bidding firms. Conversely, having only one or two bidders can not only impede achieving such benefits, but in some cases may also result in repetitive outcomes – the same contract awardees, over and over – creating an unfavorable public perception of the County's commitment to competitive process.

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

Nonetheless, some County solicitations elicit little vendor participation; the County receives just one or two bids/proposals. This situation can result from various factors, including vendor unavailability and/or contract provisions that reduce the pool of vendors able to meet those requirements.

In cases where the County receives two or less bids in response to a formal solicitation, the procurement policy requires in part that the responsible department perform a low vendor response analysis. The policy enumerates a number of activities to be conducted during this analysis including: *"review the specification to ensure that it is not unduly restrictive*

¹ Most commonly applicable to solicitations conducted via the Request for Proposals (RFP) process.

*so as to limit competition” and to “survey vendors that received notice of the solicitation but did not respond to determine why the vendor chose not to do so.”*²

The policy requires that the results of these efforts be memorialized by the department’s Department Chief Contracting Officer (DCCO) in a single- or low- vendor response memorandum, which is included along with the Recommendation for Award in the Legislative approval package.

This report focuses on the above requirement to survey vendors.

Summary of Findings

OIG identified three situations, summarized in the case studies presented below, in which the vendor surveys appear to have been conducted in a manner that captured little information that would be useful for understanding whether there were steps the County should take to increase competition. These situations occurred in two departments which together handle a very substantial portion of the County’s procurement activity. OIG has reason to believe that the manner in which the surveys were handled in these examples is not unusual.

In each of the three cases, OIG staff was able to obtain specific details from some non-bidding vendors about why they declined to bid, information which was not included in the low vendor response memorandum included in the Legislative approval package or otherwise memorialized by the County employees who initially contacted the vendor. In some cases, the reasons given to OIG by vendors for not bidding were directly related to the County’s specifications.

Additionally, where the Office of Purchasing handled a procurement on behalf of another department, the results of its survey were apparently not conveyed back to the requesting department. As a result, the County employees most knowledgeable about the product or service did not have an opportunity to give feedback before a decision was made to either reissue the solicitation or go forward to recommend award to the sole bidder.

In the instances described, it was not clear to OIG the degree to which the departments sought to accomplish the underlying, important *purpose* of the County policy. OIG believes these examples illustrate that there is opportunity for improvement in this area.

OIG observed that the County’s procurement policy outlines the circumstances in which a low vendor response analysis is required, and the steps such an analysis should include. However, the policy largely does not specify the survey questions that should be posed to

² See Countywide Procurement & Compliance Policy #CE-01-2021, sections II A, III B and G.

non-bidding vendors to elicit the most pertinent information, nor how that information should be shared.³

OIG accordingly makes several recommendations at the end of this report aimed at improving the effectiveness and consistency of low vendor response surveys Countywide.

Case Studies # 1 and #2: Department of Shared Services, Office of Purchasing

This pair of case studies both involve purchase orders procured in 2022 by the Department of Shared Services, Office of Purchasing (Purchasing). In each case multiple vendors had viewed (electronically accessed) the bid documents but only a single vendor submitted an acceptable bid.

In each instance, OIG observed there was a low-vendor response memorandum which was included in the respective contract's Legislative approval package. The memoranda were unsigned but bore the name of a Deputy Commissioner. Neither memorandum explicitly stated that non-bidding vendors were contacted for their feedback, nor, most importantly, explained *why* vendors declined to submit a bid. Rather, the virtually identical memoranda appear to merely recite general *procedures* that Purchasing is supposed to take when there is low vendor response to a solicitation.

Case Study #1 concerns the award of a blanket purchase order for HVAC Computer Software Maintenance and Monitoring for the Department of Public Works (DPW).⁴ According to the staff summary, although 19 vendors viewed the bid documents, just one vendor submitted a bid for this solicitation.

Case Study #2 concerns the award of a blanket purchase order for the repair and/or installation of locks as well as automatic doors, for various County agencies.⁵ According to the staff summary, 17 vendors viewed the bid documents, but only one vendor submitted an acceptable bid for this solicitation.⁶

³ The Policy does instruct that if a vendor gives the response that it "*is not interested in pursuing a County contract at this time—as a follow-up ask why this is the case[.]*" The Policy also instructs that a single- or low-response analysis (which consists of the vendor survey as well as a number of other steps), shall be documented in writing by the Department Chief Contracting Officer. See Countywide Procurement & Compliance Policy #CE-01-2021, Section III G 7 & 8.

⁴ Legislative Item #A-4-22.

⁵ Legislative Item #A-5-22.

⁶ According to the call log provided by Purchasing, there was one other bid, apparently not accepted; the log entry states: "submitted a bid electronically could not accept."

The Purchasing buyer responsible for handling both of the above procurements told OIG that for each solicitation he had performed outreach to various non-bidding vendors, and provided OIG with a log of the telephone calls he had made to them.

Case Study #1

OIG reviewed the Purchasing call log for the HVAC Software Maintenance and Monitoring solicitation. While 19 vendors had viewed the solicitation, only one vendor submitted a bid. The call log lists the names and telephone numbers of the 18 non-bidding vendors, as well as the buyer's notes regarding them. For 14 of these vendors, the call log lists a reason for the vendor not bidding, indicating that the buyer spoke with those vendors about the solicitation. For the other four vendors, the log indicates that messages were left for two of them,⁷ and that the telephone numbers were not in service for the remaining two.

Where the call log listed reasons why vendors chose not to bid, the information recorded therein was largely cursory. It provided little meaningful insight as to whether it might have been reasonably possible for the County to take steps to get more vendors to bid. Such information could have been of especial interest given the single bid that resulted. OIG therefore sought to explore the information in the call log by telephoning non-bidding vendors.⁸

OIG was able to speak with eight of these vendors.⁹ Of these, four confirmed that someone from Purchasing had contacted them regarding their decision not to submit a bid. OIG was able to obtain information from all eight vendors about their reasons for not submitting a bid; information that was more specific and enlightening than what appeared in the log entries. For example, the call log stated that one vendor did not bid because they "were not interested." However, when OIG spoke with that vendor's account executive, he indicated that the firm did not bid *because the software required by the County specifications is proprietary*. This rather specific explanation appears neither in the call log nor in the summary submitted to the Legislature.

For another firm, the call log indicates only that the vendor did not submit a bid because it "could not submit a competitive bid." However, when OIG spoke with the vendor's director of system sales, he stated that the County's specifications were "too broad," and explained that *his company works with some, but not all the systems specified in the contract*.

⁷ The buyer told OIG that when leaving a message, he requests that the vendor call back.

⁸ OIG did this approximately three months after the date appearing atop Purchasing's call log.

⁹ When OIG called one vendor's listed number, it led to an unrelated automated sales recording, although the call log indicates that the buyer had spoken with that vendor.

OIG notes that both of the vendors' responses reflect concerns with the County's specifications. In OIG's view, this information should be of interest to the Administration, given its receipt of a single acceptable bid.

Case Study #2

OIG staff reviewed the call log for the solicitation concerning locks and automatic doors. The call log lists the names and telephone numbers of the 15 non-bidding vendors,¹⁰ as well as the buyer's notes regarding them. For 12 of these vendors, the call log reflects a reason for not bidding, indicating that someone in Purchasing spoke with those vendors. For the remaining three vendors, the log indicates that messages were left with them.

Where the call log noted reasons why vendors chose not to bid, the descriptions appear largely cursory and, in any event, provide little insight as to whether there was something the County could have reasonably done to enhance competition. Such information could have been of especial interest given the single bid that resulted.

OIG staff again attempted to explore the information in the log, and was able to contact 11 of the vendors.¹¹ Of these, four confirmed that someone from Purchasing contacted them regarding their decision not to submit a bid.

OIG was able to obtain a more specific understanding as to why some of the vendors did not submit a bid, including whether the County's solicitation in some manner discouraged bids. In one instance, the call log states the vendor did not bid because it "was not a good fit for them." In speaking with the vendor's vice president, however, he shared with OIG the observation that *it is not typical to have both locksmithing and door repair services as part of the same contract*, as locksmiths typically do not do door repair work. Again, OIG notes that the vendor's cited concern involved the County's specifications – in this case, the combination of two trades into one solicitation – which might shed light on why the County received only a single bid.

For another company, the call log states that a vendor did not submit a bid because they "don't do this type of work." The vendor's president, however, told OIG his firm did not bid because the company missed the deadline; obviously a reason very different from what

¹⁰ This figure excludes one vendor whose bid Purchasing deemed to be unacceptable.

¹¹ OIG did this approximately three months after the date appearing atop Purchasing's call log. As noted in the prior case study, when OIG called one vendor's listed number, it led to an unrelated automated sales recording, although the call log indicates that the buyer had spoken with that vendor. This is the same vendor as similarly described in the previous case study.

is reflected in the log. While a broad conclusion about log accuracy cannot be drawn from this, especially given that the log does not specify who in the company that Purchasing had spoken with,¹² such basic discrepancy is nonetheless somewhat disconcerting.

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Observations

Compared with the general responses recorded by Purchasing, the sort of specific feedback obtained by OIG recited above appears to be much more useful for gaining a meaningful understanding of the low vendor participation, and for potentially finding ways to mitigate it.

In OIG's assessment, when County staff perform a low vendor response survey, they should do so with the underlying purpose in mind – that of finding out whether there may be things that the County can reasonably do to improve competition. As such, staff should conduct these surveys in a manner that seeks to elicit meaningful, specific feedback from non-bidding vendors. Additionally, staff should record the specifics of the feedback received so that it can be shared with users who may wish to consider modifying the solicitation, and is also available for future reference when the same goods or services are to be solicited.

Whatever the extent of information elicited by Purchasing from the vendors, it appears that the vendors' feedback was not conveyed back to the requesting user department so that it could make an informed decision, i.e., to assess whether the solicitation should be modified to bolster competition. OIG found no record that what the buyer may have learned was communicated. The buyer confirmed to OIG that he did not communicate this information, and was unaware of anyone else in Purchasing who would have done so.¹³

In OIG's assessment, there may be little practical value in the exercise of contacting non-bidding vendors if Purchasing does not share the information it obtains with client decision-makers. Most importantly, OIG believes this is a potential missed opportunity to make use of available information, to consider and potentially pursue ways to improve competition and promote economy.

¹² The call logs do contain the names and email addresses of each company's designated point of contact.

¹³ To be clear, to OIG's reading, the procurement policy does not now explicitly mandate such communication.

Case Study #3: Department of Public Works (DPW)

Background

Case study #3 pertains to the award in 2022 of a “requirements” contract by DPW for as-needed (“on-call”) general construction work.¹⁴ DPW’s Contract Summary stated that there was only one acceptable bidder when the bids were opened in July 2021.¹⁵

In light of the bidding outcome, the DPW Commissioner directed that the solicitation be cancelled and reissued. DPW accordingly reissued it in September 2021. This time five firms obtained the bid package (one *less* than the first time), and three submitted bids (likewise one *less* than the first time). DPW rejected one of those new bids, and from the remaining two bids selected for award the apparent low bidder.

Low Response Survey

As DPW was left with only two bids, the employee responsible for such requirements contracts prepared a low vendor response memorandum, signed by a Deputy Commissioner and included in the Legislative package. In OIG’s assessment, the memorandum was perfunctory, offering little specific insight as to why DPW did not receive more bids for the contract. Rather, part of the memorandum speaks in generalities about “issues that contractors have raised” about doing business with the County, e.g.:

Vendors have cited concerns about the amount of time it takes to be awarded a contract after bidding, the amount of time it takes to get paid after submitting a claim, and the amount of paperwork/documentation required concerning billing.

Such comments are merely generic, not a specific discussion exploring vendor participation for the subject contract. OIG’s impression was that the memorandum was merely a *pro forma* exercise. With the lack of specific information, the memorandum provided no insight as to the *actual reason(s)* that any particular vendor elected not to bid.

Indeed, when OIG interviewed the author of the memorandum, he confirmed OIG’s impression; that the above text *was just general language* and not specific to *this* contract. As such, while the text could give the reader the misimpression that it described the results of an individualized inquiry, in reality it did not; it provided no useful information about why vendors chose not to bid on the particular solicitation in question.

¹⁴ Legislative Item #B-1-22.

¹⁵ Six firms had obtained the bid package, and four firms submitted bids. Of these four, DPW rejected two of the bids and one bidder withdrew its bid, leaving a single bid remaining.

The memorandum did report that:

Vendors who picked up the bid package but did not bid this project (3) were contacted. One of the vendors stated that after reviewing the contract documents, they elected not to bid. The other two vendors did not return phone calls.

The reference to contacting *three* (3) vendors did not make sense to OIG, unless the author was referring to both 2021 solicitations combined, as there were only *two* vendors who picked up each bid package but did not submit a bid. The DPW employee told OIG that he called three vendors in November 2021 but he was not able to provide any documentation or further details, such as which vendor he spoke to, the date(s) of the calls, or what the vendor which “elected not to bid” had specifically explained to him.¹⁶ OIG was left with the impression that the information about these actions, which was provided in the Legislative package, was at best unsupported.

OIG contacted the vendors that purchased the bid package for either 2021 solicitation but did not bid.¹⁷ OIG notes that it was able to speak with all such vendors. These firms could not confirm that someone from Nassau County had previously contacted them about this bid opportunity.¹⁸ Each firm provided OIG with specific insight as to why it did not bid; insight that does not appear in DPW’s generic memorandum.¹⁹

OIG also noted that there were readily-apparent errors in the memorandum, likely the result of reusing an unrelated earlier memorandum.²⁰

Further, as noted above, the solicitation for the contract was issued twice. The Deputy Commissioner who signed the memorandum told OIG that he did not know whether any vendor outreach was conducted between the first solicitation and the reissuance. OIG

¹⁶ OIG was unable to independently confirm that anyone from DPW had contacted or attempted to speak with any of the non-bidding vendors.

¹⁷ OIG contacted these companies in May 2022.

¹⁸ The personnel OIG spoke with at two of the firms noted the possibility that the person who may have received such a communication was no longer with the firm.

¹⁹ A principal of one firm told OIG that the company declined to bid because it was unable to get its subcontractors to commit to being on-call at all times. Another firm cited a lack of in-house estimating staff relative to the amount of existing work the firm already had. The third firm indicated that it possibly had not submitted a bid due to union concerns.

²⁰ Page 2 of the memorandum referenced the wrong contract number and incorrectly described the contract as the Mitchel Field Rifle Range HVAC Renovations. Page 1 stated that 44 vendors were notified but page 2 stated that 32 vendors were notified.

concludes there was not; when OIG asked the DPW employee, who both authored the memorandum and has responsibility for such contracts, if there had been vendor outreach to get more bids for the second solicitation, he stated that this is not something he does.

The Contract Summary stated that there was only one acceptable bidder, which necessitated a re-bid – yet DPW apparently did not take advantage of the opportunity between July and late September, before reissuing the bid, to contact vendors to try to gain insight as to why there were not a greater number of acceptable bids. This might have better positioned DPW to make an informed decision; to assess whether the solicitation should be adjusted in some manner to promote broader vendor participation, or be left as-is.

Observations

Overall, it appeared to OIG that the vendor survey was little more than a superficial exercise in compliance.

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

Additionally, OIG believes the ideal time to contact vendors would have been *before* the solicitation was reissued.²¹ Surveying vendors *only after* the second bidding period had closed was destined to be a less useful exercise.

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Conclusions

As noted, obtaining best value is an important goal of public procurement. Maximizing the pool of potential vendors for a given procurement is an important step in achieving best value.

In OIG's assessment, when staff perform a low vendor response survey, they should do so with the underlying purpose in mind – that of finding out whether there may be things that the County can reasonably do to improve competition. As such, staff should be conducting these surveys in a manner that seeks to elicit meaningful, specific feedback from non-

²¹ In a similar vein, the procurement policy's discussion of the single- or low-vendor response analysis notes that: "*Many of the questions and issues raised in this section should be addressed prior to issuing a solicitation. Doing so will minimize the likelihood of having low vendor participation for the solicitation.*" Countywide Procurement & Compliance Policy #CE-01-2021, Section III G 9.

bidding vendors. Further, staff should memorialize the specific feedback received so that it can be shared with decision-makers as appropriate, and is also available for future reference when the same (or similar) goods or services are again to be solicited.

The case studies described above raise concern as to whether staff in two key departments conducting low vendor analyses are consistently obtaining and documenting the key information needed for decision-makers, in the Administration and the Legislature, to properly assess why there was low participation. In these examples, it is unclear from the record whether department staff solicited the most meaningful feedback available from the non-bidding vendors. Further, in the first two case studies, the information obtained by Purchasing apparently was not conveyed back to the client department. This lack of communication eliminated the possibility of the client using the feedback to consider whether it would be advisable to make changes to the current or future solicitations, to increase competition.

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

OIG appreciates that conducting a low vendor response analysis consumes staff time. OIG is also mindful of the possibility that respective departmental staffing resources may present a challenge in doing so.²² Nonetheless, OIG believes there is real value to the County in conducting low vendor response analyses, when done in a meaningful, timely and effective way.

Recommendations

The Countywide Procurement & Compliance Policy should be augmented to:

1. Make more explicit the purpose of vendor surveys in low response situations and specify the key questions to ask non-bidding vendors, including:
 - a) Why did the vendor decline to bid on the solicitation?
 - b) Was there anything in the County's specifications, terms or conditions that caused them not to bid? If so, what?

²² For example, to OIG's understanding, DPW's overall staffing level has decreased by hundreds of employees over the last decade. While the resource situation in the Office of Purchasing is different, it has been without its Deputy Commissioner for Purchasing, the Office's head, all this year; a post last held by a person with extensive experience in governmental purchasing.

- c) What changes, if any, could the County make to the solicitation to encourage competition?
2. To ensure that potentially useful information is given appropriate and timely consideration, instruct that when a vendor provides County staff with feedback that:
- a) suggests that something in the County's specifications, terms or conditions caused them not to bid, and/or;
 - b) indicates that there is a change to the solicitation or procurement process that the County could make to enhance competition;

such feedback must promptly be conveyed in writing to an appropriate decision-maker (e.g., the subject matter expert responsible for the specifications), for consideration. This step should occur *before* proceeding to recommend award or reissuing the solicitation.

3. Describe documentation requirements for the results of vendor outreach efforts, including the minimum level of detail such memorialization should capture, and where such records shall be maintained.

4. Make explicit that when a solicitation is to be reissued due to low vendor participation, before reissuing the solicitation, strong consideration should be given to *first* eliciting vendor feedback, along the lines indicated above, to determine whether it may be advisable to make changes to the solicitation.

OIG additionally recommends that suitable training be provided to applicable staff as to the implementation of the above four recommendations.
