

Nassau County Office of the Inspector General



2023 ANNUAL REPORT

Jodi Franzese, Inspector General

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

Table of Contents

Introduction – The Inspector General Concept.....	2
About the Nassau County OIG.....	6
Mandate and Mission	6
Founding Statute	7
Authorities, Powers and Function	8
IG Independence.....	10
Term of Office.....	10
Our History.....	12
Staffing	13
Complaints	15
Whistleblower Protection.....	17
Duty to Report Corruption and Fraud	20
Investigations	23
Audits	25
Reviews	25
Procurement/Contracting Oversight Activities	26
Screening of Proposed Contract Awards	27
Procurement/Contracting Monitoring	30
Capital Project Oversight	31
Other Matters.....	34
Updates to Prior Annual Report.....	37
Notifications	51
Stakeholder Training.....	51
Join the Team; Be an Agent of Positive Change.....	53
Appendix	54
OIG Contact Information	
OIG Poster	
Frequently Asked Questions about Complaints	

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

Introduction – The Inspector General Concept

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



About the Nassau County OIG

Mandate and Mission

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

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

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

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

- Adequacy of, and compliance with, controls and policies.
- Effectiveness and transparency of governmental processes.
- Compliance with laws.
- Serious employee misconduct.
- Whistleblower reprisal.

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

Founding Statute

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

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

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

Authority, Powers and Functions

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

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

⁸ Nassau County Charter § 187 (19).

⁹ See especially Nassau County Charter § 187.

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

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

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



IG Independence

Framework for Independence

The County Charter established in 2017 a detailed framework to provide the Inspector General with the fundamental tool of independence, notably including in part a fixed term of office of four years, and the authority to exercise any of the powers granted under the Charter on his or her own initiative.¹⁰

Section 189 of the County Charter requires the County Legislature to have a committee¹¹ for the purpose of maintaining general supervision of and liaison with the OIG. Section 189 also provides that the Inspector General shall meet periodically with representatives of the Legislature to review prior activities and discuss plans and objectives.

The Inspector General is not, however, subject to supervision or control by the County Executive. Section 185 of the Charter provides that the OIG shall operate independently such that no interference or influence compromises or undermines the integrity, independence, fairness and objectivity of the Inspector General or deters the Inspector General from zealously performing his or her duties.

The OIG may at times receive requests from members of the Legislature or other officials to explore particular concerns. The OIG independently assesses such requests in light of its mission and mandate, to determine whether it is appropriate for the office to undertake such inquiry.¹² The OIG also independently decides the manner, scope and extent of the activities it elects to pursue. In all instances, the OIG conducts its work objectively and impartially, without regard to partisan political considerations.

Term of Office

The Inspector General is by County Charter appointed to a term of office by super-majority vote (13 members) of the County Legislature and removable only for cause by super-majority vote. This is important because the ability of OIG to be an effective and credible oversight body is closely tied to having an Inspector General with a fixed term of office and

¹⁰ Nassau County Charter § 187 (8).

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

¹² The Inspector General's authority to conduct investigations, audits, reviews, and examinations does not apply to the Legislature.

operational autonomy.

AIG's Principles and Standards provides that, to establish and maintain the independence of Inspectors General, they should be appointed to a fixed term of office. Moreover, "... AIG believes that the minimum term should be five years and recommends a longer period of seven years to provide stability in the function."¹³ Section 189 of the County Charter provides Nassau's Inspector General with a fixed term of office but of four years.

As of this writing, the Inspector General is in holdover status, meaning that she is still serving, but her original term of office ended without reappointment by the Legislature. In 2023, the former Presiding Officer of the Legislature advised the Inspector General that a vote on her reappointment would be left to the new Legislature taking office in January 2024. The Inspector General has thus far not received definitive information as to whether or when she might be reappointed. It is unknown how long this status will continue.

While the Inspector General remains committed to her mandated mission, her holdover status does not promote the exercise of independent judgment, public confidence in OIG's independence, or the optimal functioning of OIG.

As having an OIG headed by an Inspector General who serves with an uncertain future is contrary to the carefully delineated framework for independence established in the County Charter, it is earnestly hoped that with bipartisan support the foundation of a fixed term will shortly be restored to the OIG.



¹³ Commentary in Model Legislation, Association of Inspectors General website. Also, the model legislation language preceding the commentary provides that: "*The Inspector General is appointed for a term of five years, which may be renewed at the discretion of the appointing authority.*" Many Inspectors General do serve terms of five years or more.

Our History

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

The Legislature should modify the County Charter to eliminate the position of Commissioner of Investigations due to its history of ineffectiveness,¹⁴ and replace it with an independent and adequately-staffed County Inspector General . . . The Inspector General should be afforded broad investigative authority over executive departments and the procurement process, tasked with the comprehensive vetting of county contractors, and directed to refer possible criminal conduct to the appropriate agency for prosecution.

....
Apart from the duties currently assigned to the Commissioner of Investigations, a new County Inspector General should periodically evaluate each department's recordkeeping and procedure; respond to in-house tips of fraud, waste, and abuse; receive regularized reports of activity from the decentralized selection committees in the various County departments; provide secondary review of vendor performance[,] warehouse screening documentation, and evaluate personal and financial relationships.

The Nassau County Office of the Inspector General (OIG) came into operation five years ago, in January 2019, becoming the first county-wide OIG in New York State.¹⁵ The Office was established by County legislation enacted on a bi-partisan basis in December 2017.¹⁶ The

¹⁴ The Commissioner of Investigations was an at-will appointee of the County Executive, having no fixed term or minimum qualifications under the Charter, and not requiring confirmation by the County Legislature. Unlike the IG, the Commissioner's objectives were not well-defined in the Charter (to make examinations "as he or she may deem to be for the best interest of the county") and the Commissioner was not mandated to follow professional standards. As noted above, in 2017 the County Charter was amended to create an Inspector General who was independent of the County Executive. However, notwithstanding the District Attorney's explicit recommendation to abolish the Commissioner of Investigations, that position was not eliminated from the Charter. While the post of Commissioner has remained vacant since the Inspector General's appointment, at this writing the law authorizing a Commissioner remains in the Charter.

¹⁵ Monroe County has had an OIG-like Office of Public Integrity since 2016 and Erie County has had a Medicaid Inspector General since 2012.

¹⁶ Nassau County Charter, Article I-C (Sections 185 – 196).

legislation provided, in part, a fixed term, minimum qualification standards, and enumerated powers and responsibilities, for the Inspector General.

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

As noted earlier, the lineage of the Inspector General concept goes back well before 2015. At its inception, the Nassau County OIG thus became part of an established, robust nationwide OIG community, with delineated professional standards, including those developed under the auspices of the AIG¹⁷ and, at the federal level, the CIGIE.

Now five years on, as illustrated in this report, OIG has developed and grown from concept to full operation. During 2023, OIG in part initiated 61 preliminary inquiries, investigations, or reviews, in addition to other activities including conducting 154 contract reviews, issuing 90 contract review statements, attending 28 project progress meetings and two sealed-bid openings, and monitoring 148 meetings of vendor evaluation and technical review committees.

Staffing

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

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

In an independent, stand-alone oversight organization of relatively modest size it is essential that it be comprised of persons collectively equipped with the variety of knowledge, skills and expertise that its multifaceted function requires. OIG staff members were carefully selected and are well qualified and credentialed to fulfill the many aspects of the OIG's mission. The

¹⁷ Principles and Standards for Offices of Inspector General ("Green Book"), promulgated by the Association of Inspectors General.

OIG's 2023 team consisted of career professionals whose prior positions and experience reflect a range of pertinent disciplines and relevant skills: investigators, auditors, attorneys/prosecutors, federal agents, deputy inspector general and senior inspector general. The staff previously worked for a variety of respected governmental institutions including:

- New York City Department of Investigation
- Suffolk County District Attorney's Office
- Federal Bureau of Investigation
- U.S. Department of Transportation, Office of Inspector General
- Metropolitan Transportation Authority, Office of the Inspector General
- New York City School Construction Authority, Office of the Inspector General
- Westchester County Attorney's Office
- New York County District Attorney's Office
- New York State Comptroller's Office

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

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

Complaints

Good government is everyone's business. The OIG relies in part on concerned County employees, officials, vendors, and members of the public – including the readers of this report – to provide us with information regarding possible fraud, waste, abuse, corruption, and misconduct related to County agencies, projects, programs, contracts, operations, or vendors. The OIG is responsible for receiving – and investigating as warranted – complaints, and may also proactively conduct audits, investigations and other reviews, as it deems appropriate.

In our first year, 2019, the newly created OIG received in excess of 55 complaints, tips and other contacts, including allegations of misconduct, fraud and other improprieties. Over time, as public awareness of the OIG grew, the number of contacts it received likewise grew each year. In 2023, OIG was contacted nearly 250 times.

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

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

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

The OIG forwards complaints to other organizations if its evaluation or preliminary inquiry reveals that the issues raised fall outside OIG's jurisdiction or would be more appropriately handled by another entity. During 2023, OIG referred 64 matters to other entities.

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

OIG staff did so on at least 90 occasions during 2023.



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

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

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



Whistleblower Protection

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

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

A public employer shall not dismiss or take other disciplinary or other adverse personnel action¹⁸ against a public employee regarding the employee's employment because the employee discloses to a governmental body¹⁹ information:

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

(ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.²⁰

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

¹⁸ "Personnel action" under Section 75-b means "an action affecting compensation, appointment, promotion, transfer, assignment, reinstatement or evaluation of performance."

¹⁹ For purposes of Section 75-b, "Governmental body" means "(I) an officer, employee, agency, department, division, bureau, board, commission, council, authority or other body of a public employer, (ii) employee, committee, member, or commission of the legislative branch of government, (iii) a representative, member or employee of a legislative body of a county, town, village or any other political subdivision or civil division of the state, (iv) a law enforcement agency or any member or employee of a law enforcement agency, or (v) the judiciary or any employee of the judiciary." See Section 75-b for additional pertinent definitions.

²⁰ There are also certain whistleblower protections for employees in the private sector, under New York Labor Law, Section 740, entitled *Retaliatory action by employers; prohibition*. The protections of Section 740 were significantly broadened effective January 26, 2022.

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

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

The Administrative Code was amended in 2019 in part to add the Nassau County Inspector General, for purposes of whistleblower protection, to the list of government officials to whom allegations of improper government actions may be reported. That section now provides in part that a County employee who has information about a government action which he or she reasonably believes to be true and reasonably believes constitutes an improper government action, may disclose such information to a supervisor, a Nassau County government official listed in the Code – including the Inspector General, or to a governmental body as defined in New York State Civil Service Law Section 75-b.²¹

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

County employees who reasonably believe they have been subject to retaliation for disclosing improper governmental action may bring a civil action in a court of competent jurisdiction within one year of the alleged retaliation.

Additionally, Section 196 of the County Charter provides a *criminal* penalty for retaliating,

²¹ See Nassau County Administrative Code, Section 22-4.4, subdivision 3 (a). Subdivisions 3 (b) and (c) require that certain actions be taken by County officials who receive such information.

or attempting to retaliate, against any person for assisting, communicating or cooperating with the Inspector General. Section 196 states:

Any person who:

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



Duty to Report Corruption and Fraud

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

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

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

Responsibilities of covered agencies, state officers and employees.

1. Every state officer or employee in a covered agency shall report promptly to the state inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty. Any officer or employee who acts pursuant to this subdivision by reporting to the state inspector general improper governmental action as defined in section seventy-five-b of the civil service law shall not be subject to dismissal, discipline or other adverse personnel action.²²

²² This provision is not unique to New York State. For example, the City of Chicago has a similar statutory requirement for its public servants:

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

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

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

Although the County Charter does require the County Executive to promptly notify the Inspector General of possible fraud, theft, bribery, contract mismanagement and other matters,²³ the crucial obligation of individual County employees to likewise report such matters to the Inspector General largely exists not as law but in the form of a 2019 guidance memorandum (from the now-former Deputy County Executive for Compliance). The Countywide Procurement and Compliance Policy additionally provides that those public employees and elected officials "having responsibility for contracting procurement" shall "report waste, fraud, abuse and corruption and unethical practices" to the Inspector General. Finally, an executive order (issued by the now-prior County Executive) further requires that any individual who becomes aware of a violation of the "Zero Tolerance" prohibited gifts policy report it to the IG's hotline. While these are significant measures, the scope of each is narrow, and in OIG's view they do not provide the gravity or permanence of a statutory mandate, let alone cite a penalty for noncompliance.

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

Municipal Code § 2-156-018.

²³ Nassau County Charter § 187 (5) provides in part that:

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

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

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

*if such review indicates an apparent improper government action, take appropriate corrective measures and where appropriate, refer such information to the appropriate investigative authority . . . [emphases added]*²⁴

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

Overall, OIG suggests that Nassau County would benefit from strengthening its reporting requirements; codifying its expectations into a law placing an affirmative duty on the County's public servants to report information concerning fraud and corruption.²⁵ New York State law provides a model worthy of consideration.



²⁴ Nassau County Administrative Code § 22-4.4 (3)(b). The Inspector General is included among the appropriate investigative authorities in a non-exhaustive list following that text.

²⁵ In adopting such law, it would also be important to ensure that whistleblower protection is broad enough to match the scope of all the information required to be reported, as it might extend beyond “improper government action,” e.g., fraud committed by vendors. It would also be essential to ensure that all County public servants are made aware of their disclosure obligations.

Investigations

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

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

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

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

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

Investigative Outcomes

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

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

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

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

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

OIG does not publicly report on ongoing investigations or prosecutions.

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



Audits

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

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

Reviews

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

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

Procurement/Contracting Oversight Activities

Background

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

OIG Oversight Activities

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

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

- Reviewing invoices and payment applications.
- Reviewing contract specifications and change order requests.
- Reviewing vendor evaluations.
- Monitoring ongoing projects.
- Conducting site visits at locations where a vendor is performing or has performed services.
- Examining deliverables to verify specifications have been met and correct quantities have been provided.
- Reviewing materials-testing results/certifications.
- Reviewing reports of integrity monitors and regulatory agency records relative to vendors or prospective vendors.
- Notifying the Administration and/or Legislature of the discovery of potentially adverse information about current or prospective vendors.
- Conducting investigations, audits, preliminary inquiries, and other reviews as deemed appropriate.

Screening of Proposed Contract Awards

During 2023, OIG, as part of its oversight role, screened all proposed contracts and amendments prior to their approval by the Legislature. OIG independently selected 154 of these for further scrutiny and provided to the Legislature 90 Contract Review Statements, which conveyed the results of particular reviews.

Review of Vendor Disclosures

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

While it is the operational responsibility of the various procuring departments to review and assess these disclosures, OIG independently reviews the disclosures on an oversight basis.²⁶ Where OIG detected potential matters of concern, it apprised the Administration and/or the Legislature. These concerns included apparent omissions and/or discrepancies within vendors' BHF's and/or individual PQFs, or OIG's discovery of adverse information, e.g.:

- Proposed vendor failed to disclose political contributions (11 instances).
- Proposed vendor failed to disclose being controlled by another entity (2 instances).
- Proposed vendor failed to disclose one or more principals (6 instances).
- One or more principals of a proposed vendor failed to disclose their position(s) in other business entities (28 instances).
- Proposed vendor failed to disclose affiliated business(es) (10 instances).
- Proposed vendor failed to disclose sharing space with another entity (11 instances).
- Proposed vendor was an inactive corporation in New York.
- Proposed vendor's subcontractor was an inactive corporation in New York (2 instances).
- Proposed vendor did not disclose OSHA violations (5 instances).
- Expired insurance certificate (13 instances).
- Expired vendor disclosure forms (13 instances).
- Proposed vendor's given address and/or telephone number was associated with a different entity (2 instances). In one instance, the vendor's listed address was a mailbox at a UPS store and its telephone number was that of another County vendor.
- Proposed vendor failed to sign non-collusive bidding certification.

²⁶ While OIG reviews proposed contracts and their disclosure forms on an oversight basis, the determination of vendor responsibility, including the task of vendor vetting, resides with the Administration.

- Proposed vendor did not disclose an investigation which resulted in an order to pay a civil penalty in connection with damage to a natural gas pipeline.

As is apparent from the above listing, many of these types of matters were recurring issues during 2023.

Other information OIG uncovered during 2023 included:

- Proposed vendor had entered into a \$19 million settlement agreement with the U.S. Department of Justice for alleged violations of the False Claims Act.
- Proposed vendor had entered into a \$10 million settlement agreement with the U.S. Securities and Exchange Commission.
- An affiliate of a proposed vendor had an active federal tax lien in an amount over \$1.6 million.
- Proposed vendor was currently debarred by the New York State Workers' Compensation Board.
- An affiliate of a proposed vendor was currently debarred by the New York State Workers' Compensation Board.
- Proposed vendor had compliance reviews by the Federal Motor Carrier Safety Administration that resulted in civil enforcement penalties.

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

Detection of Insufficient Documentation

OIG also reported in 13 instances on document omissions in some of the Legislative packages submitted by the procuring departments:

- Adverse information memorandum not provided (7 instances).
- Low bidder participation memorandum not provided (3 instances).
- Delay justification memorandum not provided (3 instances).

The foregoing issues were subsequently resolved.

Procurement/Contracting Monitoring

General Observations

As we first related in our inaugural annual report, the District Attorney's 2015 *Special Report on the Nassau County Contracting Process* described "serious systemic deficiencies that require the immediate attention of the County Executive and Legislature to protect taxpayers and prevent future scandal"²⁷ and noted in part that "One of the greatest vulnerabilities of the County is its predominately decentralized procurement process."

It is apparent from OIG's five years of observation that although the County still has key procurement functions being performed across various departments, it also has made important improvements since the state of affairs detailed in the District Attorney's report. These include creation of the position of Chief Procurement Officer,²⁸ staffed by a well-experienced procurement professional, in part to establish and ensure compliance with uniform procurement policies and standardized procedures, as well as the issuance of a Countywide Procurement and Compliance Policy (updated periodically), a series of supplemental policy enhancements, and the adoption of the Vendor Code of Ethics.²⁹ The Vendor Code, as well as a number of the policy enhancements, were recommended by OIG.

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

Selection Committee Oversight

OIG's monitoring of procurement-related activity during 2023 included attending two sealed bid openings and 136 selection committee meetings conducted as part of RFP or

²⁷ The report's executive summary also commented in part that: "Nassau's porous contracting process is the product of no one administration or political party, but instead the result of years of neglect, ineffectual surface-level reforms, and a regrettable failure to learn from past failings."

²⁸ Now retitled as the Chief Procurement and Compliance Officer (CPCO).

²⁹ OIG notes however, that the senior-level post of Deputy County Executive for Compliance, first created three administrations ago, and cited in the District Attorney's 2015 report, has been vacant since 2022. It is OIG's understanding that the duties of that executive post were added to those of the Chief Procurement Officer, a position apparently of lower rank and authority, and, despite the added responsibility, with less staff than in the past.

“mini-bid” evaluation processes in various procuring departments.³⁰ Where OIG had concerns about the conduct of a selection committee meeting it observed, it brought them to the attention of the Chief Procurement and Compliance Officer for his information and appropriate action.

Capital Project Oversight

Family and Matrimonial Courthouse Project

Among the matters that OIG monitored during 2023 was the ongoing Phase 2 construction of the Family and Matrimonial Courthouse (FMC) project, one of Nassau County’s largest capital projects.

Project Background

This project is the conversion of a 239,000 square foot County-owned office building in Garden City, formerly used by the Department of Social Services, into a 255,000 square foot court complex. When completed, the Family Court will consist of 23 courtrooms and hearing rooms and the Matrimonial Center will consist of 13 courtrooms and hearing rooms. Also included in the project is a Family Justice Center which will occupy part of the first floor and basement, a sally port, holding facilities, judicial chambers, auxiliary offices, and interview rooms.

A general contractor was awarded an \$85.6 million contract for Phase 2, receiving the notice-to-proceed in April 2021.³¹ Phase 2 includes a complete interior fit-out and new architectural, structural, HVAC, mechanical, electrical, and plumbing work, as well as vertical transportation, and fire protection and security systems. Phase 2 work also includes site improvements, such as new sidewalks, curbs, paving, drainage, and landscaping.

³⁰ Selection committees are also known as evaluation committees.

³¹ The preceding Phase One involved work on the building core and shell, including interior demolition asbestos abatement, façade reconstruction, structural modifications, roof replacement, and drainage improvements.

Project Cost and Schedule

As related in our previous report, the original scheduled contract completion date was October 15, 2022. Phase 2's work, however, remained ongoing throughout 2023. OIG's monitoring of the project during 2023 accordingly included attendance at 17 project progress meetings, screening of 23 change orders³² under review by the Change Order Committee,³³ and an unannounced project observation site visit. During progress meetings, OIG staff posed questions and sought clarifications regarding construction issues and overall project management.

The FMC project continued in 2023 to face schedule and cost overruns. As of December 31, 2023, the project was then 810 calendar days delayed, with the anticipated project completion date moved out to January 2, 2025.³⁴ As of the December 2023 project progress report, DPW has approved over \$34.7 million in change orders (through 2023), to the originally \$85.6 million contract. Adding pending change orders and other projected costs, the construction management firm has projected a final \$139.6 million construction cost, a 63% increase over the base contract amount.³⁵

OIG will continue to monitor this project.

Second Precinct Police Station House Replacement Project

OIG's monitoring activities during 2023 also included the project to replace the fire-damaged Second Precinct police station house.

Project Background

The Police Department's Second Precinct serves Bayville, East Norwich, Hicksville, Jericho, Lattingtown, Locust Valley, Oyster Bay, Plainview, Syosset, Westbury, and Woodbury.

³² The Associated General Contractors of America defines the term *change order* as:

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

³³ The Change Order Committee is comprised of representatives from the general contractor, County consultants, DPW, the County Attorney's office, and the County Comptroller's Office.

³⁴ Information from Monthly Project Progress Report 32, December 2023.

³⁵ Information from Monthly Project Progress Report 32, December 2023.

On November 26, 2022, a fire severely damaged the Second Precinct's station house, located at 7700 Jericho Turnpike in Woodbury. The building was deemed unsalvageable, and the County Executive declared an emergency to expedite the construction of a replacement station house.³⁶

The project includes demolition of the damaged building and construction of a new station house, as well as repair of the existing garage, replacement of the underground fuel storage tanks, and site improvements. The replacement building will be at the same address as the original one.

Status

Following a competitive bidding process, in August 2023 a construction contractor was awarded a contract with a base value of just under \$26.1 million. The Notice to Proceed was issued to the contractor shortly thereafter. The planned contract duration is 450 calendar days, with a completion date of November 2024. Following abatement work, demolition and construction began in November 2023.

OIG's activities relating to the project during 2023 included observation of the selection process for the construction management firm, and the bid opening for the construction contract, as well as conducting vendor vetting, and attending 11 project progress meetings. During these meetings, OIG staff posed questions and sought clarifications regarding construction issues and overall project management.

As of the end of 2023, no change orders had been issued. OIG will continue to monitor this ongoing project.

Oversight of Task Order Awards

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

Task orders are subsequently issued to firms that have been awarded such contracts. Task orders are awarded to these firms via a "mini-bid" competitive selection process. While

³⁶ In the interim, Second Precinct personnel are operating out of temporary facilities.

the on-call contracts are subject to Legislative approval, the ensuing task order awards issued under those contracts do not come before the Legislature for approval.

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

The now-former Presiding Officer of the Legislature had requested that DPW’s Commissioner ensure that OIG henceforth be afforded the opportunity to monitor the task order award process. This was done, and OIG accordingly expanded its oversight activities to include observing TRC meetings, similar to OIG’s monitoring of contract selection committee meetings. During 2023, OIG attended 12 such TRC meetings.

Other Matters

Use of Unauthorized Selection Committee Certification Forms

Background

The *Countywide Procurement & Compliance Policy* (the Policy) in part instructs the County’s various departments and offices as to the methodology, and provides the approved forms, to be used by vendor selection committees. Prior to the initial meeting of each selection committee and before opening any vendor proposals, each committee member is required to execute three certification forms.³⁷ The Policy explains that "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."

Observations

In the course of routine monitoring of selection committee activity, OIG discovered that one County office had recently distributed modified versions of the certification forms to members of two then-active selection committees. OIG observed that these versions had some important differences in wording from the approved Countywide forms. OIG

³⁷ These are: the *Competitive Proposal Solicitation Rules and Responsibilities* (also called the *RPF Rules and Code of Ethics*); the *Certification of Participants in the Selection, Negotiation, or Award of Contract*; and the *Conflict of Interest Affirmation*.

There is a parallel version for consultants of the *RPF Rules and Code of Ethics*, titled *Competitive Proposal Solicitation Rules and Code of Ethics for Consultants*.

ascertained that the modifications had not been approved by the Chief Procurement and Compliance Officer (CPCO).

Some of the differences were language omissions, which effectively reduced the range of disqualifying interests/activities of committee members. There were various other differences as well.³⁸ While OIG has no evidence that the use of these versions was attributable to improper motivation, in OIG's assessment the impact nonetheless was a significant deviation from established County policy governing prohibited conflicts of interest.

In OIG's view, the use of these unauthorized versions of committee certifications was materially non-compliant with existing County policy. The forms' truncated content curtailed some key policy restrictions and provisions.

Notification

As the two active selection committees were scheduled to convene within days of OIG's discovery, OIG issued a Flash Letter to the CPCO, conveying its observations and recommendations.³⁹ OIG additionally advised that it had discovered that the non-compliant forms had been used by at least two previous selection committees, but was not aware of the use of such forms beyond that one office. OIG also had no evidence that there had been conflicts of interest or improper conduct involving the members of those committees.

Recommendations

OIG recommended in its Flash Letter that appropriate action be taken expeditiously, to include ensuring that:

1. All committee members execute the authorized versions of the three forms in advance of the upcoming selection committee meetings.

³⁸ For example, absent from one of the unapproved forms was the advisory that if a member *appeared* to have a conflict of interest, he/she would be excused from the evaluation process. That form's language also modified the declarant's reportable state of knowledge, changing the belief that he/she "may have" a conflict of interest to "have" a conflict of interest, a higher degree of certainty.

Another example left out the instruction to report an interest to the authorized point of contact, and another modification seemed to remove the need for non-voting members to affirm that they do not have a conflict of interest. This omission was of concern because even non-voting members can influence committee decision-making.

³⁹ In advance of the Flash Letter, OIG also verbally notified the Chief Procurement and Compliance Officer of its observations.

2. All selection committee members, Countywide, handling pending solicitations have executed all the required, authorized forms.
3. Appropriate instruction is provided Countywide to ensure that only authorized selection committee forms are used (including by non-voting members and committee advisors).

Result

In response, both the CPCO and the office affected promptly advised OIG to the effect that the above recommendations had been/would be implemented. OIG deems the corrective actions to be responsive and appropriate.

Other Activities

In addition to the various other activities described in this report, OIG during 2023 attended all monthly Departmental Chief Contracting Officer (DCCO) teleconferences on procurement issues, the District Attorney's Annual Labor Conference, a countywide procurement policy training session (at which OIG provided a segment of the training), and an annual meeting of the interagency County Procurement Policy Monitoring and Assessment Committee. OIG additionally met with the CPCO on a monthly basis to discuss various procurement matters, and conducted a site visit of a facility operated by a licensee. As OIG's mandate includes oversight of boards and commissions, OIG staff also attended meetings of the Board of Ethics and the Civil Service Commission.

For professional development, OIG staff attended the annual training conference of the Association of Inspectors General, which in 2023 was held nearby in New York City.



Updates to Prior Annual Report

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

Background

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

The law also specifies, in part, that an impermissible contact is one in which an offerer (e.g., a vendor or a party acting on behalf of an offerer) communicates with a government entity employee who is not the designated point of contact, during the restricted period, "under circumstances where a reasonable person would infer that the communication was intended to influence the government entity's conduct or decision regarding the governmental procurement."⁴⁰

The business community is obligated to make only permissible contacts during the restricted period and may only contact those persons who are designated by the governmental entity regarding a government procurement.⁴¹ An offerer's knowing and willful violation of the Procurement Lobbying Law may result in a determination of non-responsibility for that vendor. Further, an offerer can be debarred for four years for a second violation within a four-year period.

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

⁴⁰ New York Finance Law § 139-k (1)(c); *see also* § 139-j (c); § 139-j (3).

⁴¹ The law also identifies certain types of permissible contacts that need not go through the designated point of contact. *See* State Finance Law § 139-j (3)(a).

and guidelines outlining the implementation of State Finance Law §§ 139-j and 139-k,⁴² including, for example, the establishment of a process for reviewing allegations of violations of the permissible contact provisions, and for the imposition of sanctions if violations are found.⁴³

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

In 2022, OIG accordingly brought the foregoing information, including sample provisions, to the attention of the Chief Procurement and Compliance Officer (CPCO), and recommended that the Administration promulgate and train the appropriate persons in guidelines for implementation of Finance Law §§ 139-j and 139-k.

Update

In response to OIG's recommendations, in 2023 the CPCO promulgated a new Countywide policy designed to comply with the requirements of Finance Law §§ 139-j and 139-k. It applies to procurements with an estimated annualized expenditure in excess of \$15,000. The CPCO also provided related training to County personnel involved in procurement.

The policy established in part a procedure to record, report, evaluate, and address vendor contacts, made during the course of a solicitation regarding that solicitation, in a manner other than as specified in the solicitation. This would apply to vendor contacts with County personnel who are not the designated point of contact for the subject solicitation.

The policy specifies that County employees and officials must report in writing any communication by an offerer, occurring during the restricted period of the procurement process, which a reasonable person would infer was intended to influence the procurement.

⁴² State Finance Law § 139-j, also requires government agencies to incorporate in their solicitation of proposals or bid documents or specifications for all procurement contracts, a summary of the policy and prohibitions regarding permissible contacts, and copies of rules and regulations and applicable entity guidelines and procedures regarding permissible contacts. Section 139-j further requires each government entity to seek written affirmations from all offerers as to their understanding of and agreement to comply with the entity's procedures relating to permissible contacts.

⁴³ § 139-j (9).

To that end, a standardized Record of Contact form was created for reporting contacts received during the procurement process.

In conformance with state law, the policy defines impermissible contacts as when

[a]n offerer contacts a Nassau County employee or official, other than the designated contact person, during the restricted period, and a reasonable person would infer that the communication was intended to influence the conduct of or decision about, the procurement or contract award.

The policy accordingly requires that impermissible contacts must be immediately reported to OIG, the Departmental Chief Contracting Officer (DCCO), and to the CPCO. The policy sets out consequences for making impermissible contacts, including non-award of the contract, a determination of vendor non-responsibility, and potentially debarment.

Further, reflecting state law, the policy requires certain elements be incorporated into the County's solicitations, namely:

- The designated point of contact is named.
- A brief summary of the Procurement Lobbying Law's requirements.
- A Procurement Lobbying Law form, containing the vendor's affirmation of its understanding of, and agreement to comply with, the Procurement Lobbying Law, and a certification that all information provided with respect to that law is true.
- A disclosure of the vendor's prior non-responsibility determinations, if any, by any governmental entity within the previous four years (where such prior finding of non-responsibility was due to a violation of Finance Law § 139-j, or the intentional provision of false or incomplete information to a governmental entity).
- A statement of the right of the County to find a vendor non-responsible and/or terminate the contract in the event that the offerer filed an intentionally false or intentionally incomplete certification.

Offerers must submit completed Procurement Lobbying Law forms for their bid/proposal to be considered responsive. If the offerer's certification to the County is found to be intentionally false or incomplete, the County may terminate the associated contract.

Result

OIG deems the actions taken by the Administration in this matter to be appropriate and consistent with OIG's recommendations.

Advisory Report: Effectiveness of Low Vendor-Response Surveys

Background

As previously reported, OIG repeatedly observed that some County procurement solicitations elicit little vendor participation; the County receives in response just one or two bids or proposals. Maximizing the pool of potential vendors for a given procurement is an important step in achieving the goal of best value, as increased competition offers additional options as to cost and quality. It is axiomatic that increasing competition can result in lower cost to the purchaser. In addition, greater competition also gives the County more options regarding the qualifications and proposals of bidding firms. Conversely, having only one or two bidders or proposers restricts the County's choice as to who will provide a product or service, and potentially exposes the County to higher prices.⁴⁴

It is prudent for County officials to find out why certain solicitations yield low vendor response. Accordingly, when the County receives two or less bids in response to a formal solicitation, the procurement policy requires that the responsible department perform a low vendor-response analysis that includes (1) reviewing the specification to ensure that it is "not unduly restrictive so as to limit competition," and (2) surveying vendors which received notice of the solicitation but did not respond, to determine why the vendor chose not to submit a bid. The results of these efforts are to be reported in a memorandum included in the Legislative approval package.⁴⁵

OIG Advisory Report

In a draft Advisory Report issued in October 2022,⁴⁶ OIG had described three situations in which low vendor participation surveys were conducted in a manner that captured and conveyed little information useful for understanding whether there were steps the County should take to increase competition. These situations occurred in two departments which together handle a very substantial portion of the County's procurement activity. Further,

⁴⁴ Additionally, low levels of vendor participation can result in repetitive outcomes – i.e., the same contract awardees over time. This may create an unfavorable public perception of the County's commitment to a level playing field for vendors. This in turn can foster a "vicious cycle" which discourages future bidders/proposers.

⁴⁵ Countywide Procurement & Compliance Policy #CE-01-2021, sections II A, III B and G.

⁴⁶ Advisory Report #A-22-196, entitled *Effectiveness of Low Vendor Response Surveys*.

there was evidence that the manner in which the three outreach surveys were handled was not unusual.⁴⁷

OIG staff followed up by directly contacting non-bidding vendors and was able to obtain specific explanations as to why they declined to bid. Notably, as detailed in our previous Annual Report, some of the reasons given to OIG by vendors for not bidding were directly related to the County's specifications, i.e., factors under the County's control. For example, one vendor explained that the County's specifications were too broad, and another vendor told OIG that his company did not bid because the software specified by the County is proprietary.

OIG reported that this sort of specific information had not, however, been memorialized by the employees who performed the outreach surveys, nor communicated to the operating department employees best equipped to assess the feedback. This was a missed opportunity for informed decision-making about whether the solicitation should be modified to bolster competition.

Similarly, the rote language of the low-response memoranda in the contract approval packages provided the Legislature with little insight as to whether it might have been feasible for the County to have done something to elicit more bids.

Our report also noted that in one case reviewed, the solicitation had been cancelled due to low vendor response, yet vendor outreach was not done *until after the solicitation was reissued unchanged* and again drew a low response.

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

⁴⁷ While the Advisory Report described three case studies, the generic language of their low vendor analysis memoranda was not unique; rather it mirrored memoranda OIG has seen in various other procurement packages. Thus, in OIG's assessment, it is highly likely that the concerns identified in OIG's report apply beyond the particular samples described.

Advisory Report Recommendations

OIG advised that when departmental staff perform a low vendor response survey, they should be doing so with the purpose of finding out whether there may be things that the County can reasonably do to improve competition. Staff should thus be conducting outreach in a manner that seeks to elicit meaningful, specific feedback, and memorialize the information gleaned so that it can be shared with decision-makers.

To improve the effectiveness of the procedures for low vendor response surveys, OIG recommended that the Countywide Procurement & Compliance Policy be augmented to:

1. Make more explicit the underlying purpose of vendor surveys, and specify the key questions to be asked of non-bidding vendors,⁴⁸ including:

- Why did the vendor decline to bid on the solicitation?
- Was there anything in the County's specifications, terms or conditions that caused them not to bid? If so, what?
- 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

- suggests that something in the County's specifications, terms or conditions caused them not to bid, and/or;
- indicates that there is a change to the solicitation or procurement process that the County could make to enhance competition;

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

3. Describe the documentation requirements for the results of vendor outreach efforts, including the level of detail to be captured.

⁴⁸ As OIG reported, the existing policy only instructed in this regard that if a vendor gives the response that it is not interested in pursuing a County contract, "*as a follow-up ask why this is the case[.]*" The policy did not instruct how the elicited information should then be shared.

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

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

Update

In subsequent follow-up, the Chief Procurement and Compliance Officer (CPCO) advised OIG that policy revisions had been drafted and were under review.

In the interim, while performing routine review of proposed contracts submitted to the Legislature, OIG in 2023 observed that the County had received only a single bid for a blanket purchase order for dimensional lumber, even though 19 vendors had reviewed the solicitation.⁴⁹ The single bid was from the incumbent vendor. OIG accordingly conducted a review to ascertain why other vendors did not bid.

Similar to OIG's previous observations, the Office of Purchasing had again prepared a rote memorandum which failed to provide any information as to the results of its vendor survey. It therefore yielded no insight into whether there were steps that the County could reasonably take to increase competition, a situation which OIG's previous recommendations sought to remedy. OIG again also found that the results of Purchasing's outreach/analysis were not conveyed back to the requesting department, DPW, which has technical knowledge of the goods being sought.⁵⁰

Reviewing the solicitation, OIG saw that it encompassed many line items, each a different type or size of dimensional lumber, accompanied by an estimated annual quantity. While some of these items were commonly used wood products, others were far less common specialty products (e.g., exotic woods). Having received just a single bid meant that the County did not receive the benefit of competing prices, even for the common lumber products.

⁴⁹ Legislative item # A-16-23.

⁵⁰ The Purchasing buyer responsible for this solicitation told OIG that there had been outreach to non-bidding vendors, and that common reasons vendors cited for not bidding were: lingering effects of COVID, hesitation to commit to a price for one year given the volatile market, and not being able to supply one or more of the lumbers specified in the solicitation. DPW was not even aware, however, that only a single bid had been received.

Purchasing's call log provided limited details about its contacts with non-bidding vendors, but it did reflect that that one potential vendor explained that it "*cannot provide exotic woods.*"

As it did the previous year, OIG contacted vendors who had viewed the lumber solicitation but did not bid. OIG staff was again able to obtain details from vendors as to why they declined to bid, with more specificity than was documented by Purchasing.⁵¹

As indicated below, two recurring key points emerged from these contacts; these related to the County's specifications: (1) A number of vendors had concerns about supplying the more exotic specialty wood products, and (2) were under the impression that if they bid, they would have to bid on all of the line items. They thus refrained from bidding entirely.

- Some vendors told OIG that it was difficult to obtain and/or assure future pricing of the uncommon lumber products.
- One vendor told OIG that they would have submitted a bid if they could have bid on some, but not all of the line items. The vendor explained that they did not bid on the solicitation because the quantity of lumber asked for was large and the line items were for "*all lumbers known to man,*" including some exotic woods that they did not even know where to obtain.⁵²
- Another vendor similarly told OIG that their company did not submit a bid because some of the line items were for exotic woods that are sourced from Brazil. The vendor expressed concern about submitting a bid they could be held to for as long as a year when there are significant price swings for the exotic woods and that such products are not always easy to source. The vendor also had concerns about the future legality of importing some of these types of lumber. The vendor also indicated that it was not common to see some of these items in public sector solicitations.⁵³

⁵¹ In this effort, OIG staff did not utilize any information or systems that Purchasing does not have.

⁵² DPW staff told OIG that before the solicitation was issued, they reviewed the list of line items used in the last (2018) lumber solicitation. Two items were added to the list; none were deleted. DPW staff acknowledged that some items on the list are rarely used, but explained that all items were left in place in case they should again be needed, and the anticipated difficulty in obtaining items not already included in an active County contract.

⁵³ The vendor also commented that while to a "non-expert" it may seem logical to group all the lumbers together, there are differences in the treatments and framing of the various line items, and that they come from different suppliers.

- Yet another vendor told OIG that it would be cost-prohibitive to procure some of the woods in the solicitation, given supply chain difficulties. In light of this, and the perceived requirement to bid on all of the items, the vendor declined to bid.

OIG observed that the solicitation did not state whether bidders were required to bid on every item or could just bid for selected line items.⁵⁴

OIG accordingly issued in August 2023 a Contract Review Statement, conveying to the Administration and Legislature the foregoing results, and also reiterating its 2022 Advisory Report observations and recommendations for improving the effectiveness of low-vendor response surveys. With respect to the lumber solicitation, OIG recommended that the Administration consider:

1. Reissuing the solicitation in a manner that would increase the likelihood of receiving additional bids, at least for the common commodities. For example:
 - Issue two solicitations, one for uncommon woods, and the other for common woods, or
 - Group the commodities into categories, with a category for the exotic/uncommon woods, and instructing potential bidders that they need not bid in all categories, and/or
 - Modifying solicitation language to state whether bidders are required to submit bids for every line item.
2. If the solicitation is to be reissued, have DPW review the seldom-used line items and their estimated quantities, to determine whether there are any that are no longer necessary or whose quantities should be reassessed.

Outcome

Soon thereafter, in August 2023 the CPCO issued revisions to the Countywide Procurement & Compliance Policy. These were consistent with OIG's recommendations for improving the effectiveness of low vendor response surveys. The policy revisions clarify the process to elicit, record, and make use of specific vendor input. They also

⁵⁴ The Purchasing buyer responsible for the procurement advised OIG that had a bidder submitted a "no bid" (not bid) on some of the line items, this would not have automatically voided its bid for the remaining items. The vendors, however, would not necessarily know that.

include instructions for communicating the information obtained with the subject matter experts. The revisions additionally explain the steps to be followed before reissuing a solicitation due to low vendor participation.

Also consistent with the recommendations, in September 2023 the CPCO provided live training to County staff concerning in part these revisions.

As to the lumber solicitation, in September 2023 following issuance of OIG's Contract Review Statement and consistent with OIG's recommendations therein, the solicitation was reissued, but now as two separate solicitations, with one being solely for specialty lumber items. Some of the prior line items for specialty woods were eliminated, and quantities were modified from the prior solicitation for some other products. The new solicitations yielded three bids each, a substantial improvement in vendor response from the single bid previously received.

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

Background

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

Private sector consultant firms, which advise and/or act on behalf of the County, may play roles which in some respects mirrors that of County employees. For example, program management consultants may be present as non-voting members of, or subject matter expert advisors to, vendor selection committees. Such consultants may not only participate in the examination of proposals but actively participate in committee discussions – opining as to the merits of vendors' proposals and potentially having an influence on the selection committee's decision-making process.

In 2022, OIG had issued an Advisory Report noting that the County's Vendor Code of Ethics, which applies to the conduct of the County's vendors, lacked provisions to regulate the receipt of gifts from prospective vendors to the County's privately employed agents, such as the County-retained consultant firms. This stood in contrast to what the Code, as

well as an existing executive order and other policies, provides in restricting vendors' gifts to the County's own employees.

OIG also reported that County Executive Order 2-2018 in part requires a provision in all county contracts prohibiting any vendor (or its representative) from offering, giving, or agreeing to give anything of value to a County "*agent, consultant, construction manager or other person or firm representing Nassau County,*" or to a member of their immediate family, in connection with the performance of their duties on behalf of Nassau County.⁵⁵ That contractual provision, might not, however, govern vendor conduct *prior* to contract execution/award.

OIG noted that the Vendor Code of Ethics would provide a highly suitable place to reinforce the prohibition of gifts by vendors to the County's agents or representatives. This was so because the Vendor Code served as a central repository of provisions governing the conduct of vendors, and especially because the Code is applicable even to pre-contractual status.⁵⁶

However, the current procurement policy did not squarely direct that the Vendor Code itself be incorporated into contracts and solicitations or specify when or how the contents of the Vendor Code should be communicated to vendors. In OIG's assessment, this decreased the likelihood of full compliance with the intent of the Executive Order.

Additionally, OIG reported there was opportunity for improvement in the certification forms used by consultants participating in County vendor selection committees. Specifically, the forms presently did not address potential conflicts of interest created by consultants' receipt of gifts such as meals or "business hospitality" from County contractors or consultants.⁵⁷

OIG's Recommendations

OIG accordingly recommended that the Administration:

⁵⁵ Emphasis added. This requirement is repeated in the *Countywide Procurement & Compliance Policy*.

⁵⁶ The definition of the word "Vendor" in the Vendor Code of Ethics includes any individual or entity *seeking* to do business with Nassau County.

⁵⁷ OIG noted that what is acceptable practice within the corporate environment does not always align with acceptable conduct in governmental environments, such as Nassau County. As meals or other business hospitality may be more commonplace in the private sector, a consultant might not necessarily identify that the receipt of gifts from other vendors might be perceived as a conflict – or as otherwise raising a question as to impairment of objectivity – and thus not acknowledge such gifts in his/her certifications. The existing consultant forms did not address this consideration.

1. Enhance the Nassau County Vendor Code of Ethics by adding explicit prohibitions:

- of vendors providing gifts or other benefits to County agents/representatives of Nassau County; and
- of acceptance of gifts or other benefits by County agents/representatives of Nassau County.

OIG also provided sample language for how this recommendation could be accomplished.

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

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

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

In response, the Chief Procurement and Compliance Officer (CPCO) advised OIG that a draft policy incorporating OIGs recommendations would be submitted for the Administration's review.

Update

The CPCO subsequently advised OIG of a number of actions taken in response to the recommendations, namely:

- The Vendor Code of Ethics has been incorporated into the County's model RFP (Request for Proposals) as well as into the bid documents of DPW and the Office of Purchasing.
- New Vendor Code provisions that would prohibit gifts to the County's consultants and agents have been drafted and are under review.
- Two certification forms and a conflict-of-interest form have been revised in accordance with OIG's recommendations.

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

The certification by consultants⁵⁸ has been revised to include, as a reportable interest, the offer or receipt of a gift or other benefit within the past year, by a participant (or family member) from a vendor or agent of a vendor.

The conflict-of-interest form for consultant firm principals⁵⁹ has been revised to require that they attest to their understanding that all persons or firms representing the County (and their family members), are prohibited from accepting gifts of any kind, directly or indirectly, from any County vendor in connection with the performance of duties on behalf of the County.

OIG plans to follow up during 2024 as to the implementation of the Vendor Code revisions.

OIG-Recommended Revisions of Vendor Disclosure Forms

To facilitate the County's vendor "responsibility" determination (vetting) process, prospective vendors are required to submit to the Administration disclosure documents, including a Business History questionnaire form (BHF), and the principals of the vendor organizations must each submit an individual Principal Questionnaire Form (PQF).

As previously reported, OIG had conducted a detailed examination of the County's existing BHF vendor disclosure form, and of certain revisions for it then under consideration. Based on that review, OIG provided the Chief Procurement and Compliance Officer (CPCO) with a set of recommended supplemental revisions of that form. OIG likewise provided the CPCO with a set of recommended revisions for the companion PQF.

OIG's recommended revisions were intended to enhance and clarify the questions posed to vendors, improve the instructions identifying the persons who are required to file, and to better capture the range of information relevant to the County's responsibility determinations. This included modification of existing questions and the addition of certain pertinent questions, as well as enhancing the wording of the vendor's certification.

For example, unlike the existing BHF, the draft revision inquired as to whether prospective

⁵⁸ *Certification of Consultants Participating in the Selection, Negotiation or Award of Contracts.*

⁵⁹ *Conflict of Interest Affirmation for Principal of a Consultant Firm.*

vendors:

- were debarred, suspended, or disqualified by other governmental entities.
- had received unsatisfactory performance ratings from other governmental entities.
- had defaulted on government contracts.
- had been required to retain the services of an integrity monitor.

Not only is this sort of information routinely solicited by other major government entities, but in OIG's assessment it is best practice and prudent for the County to likewise be aware of, and explore, any such adverse information about the vendors it is considering doing business with.⁶⁰

OIG was initially given to understand that the CPCO had adopted revised BHF and PQF forms, which in part reflect a number of the enhancements recommended by OIG. OIG subsequently learned however, that neither of the new versions were actually in use. OIG accordingly followed up during 2022 and 2023 to ascertain whether the Administration would be implementing the revised forms.

As an aside, OIG has occasionally heard comments by some County employees expressing the belief that the County receives few bids because its potential vendors have the burden of submitting disclosure forms. This belief is not, however, supported by evidence known to OIG. For decades, the vendor community in our region has been routinely submitting detailed disclosure information to a variety of other public entities, including the City of New York, the State of New York, the School Construction Authority, the Port Authority, and the Metropolitan Transportation Authority.

Moreover, in specific instances in both 2022 and 2023 where few bids were received in response to County solicitations, OIG directly contacted a number of companies to find out why they did not submit bids. *Not a single company* in either year cited the County's disclosure requirements as being any part of the reason it decided not to submit a bid.⁶¹

⁶⁰ The existing PQF does address a portion of the additional information, e.g., debarment, but phrased only in the limited contexts of the declarant individually and the declarant's affiliation with entities *other than* the actual vendor seeking to do business with Nassau County. DPW does have an additional vendor disclosure form, titled Qualification Statement, that in part addresses a portion of such information, but to OIG's understanding it is neither a Countywide form, nor does it address the full range of additional information that the revised BHF and PQF would.

⁶¹ Likewise, OIG's related review of Office of Purchasing's call logs failed to reveal any instance where a vendor cited the County's disclosure requirements as a reason that it did not bid.

Update

As of this writing, it is OIG's understanding that the Administration presently intends to continue using the existing disclosure forms, not the revised ones.

Unresolved Concern

Given their reduced coverage of key information, and based on the collective experience of OIG's staff in oversight and investigation, OIG deems the existing disclosure forms to be significantly less effective than the proposed revisions for thorough vendor vetting and protection of the County's interests. OIG accordingly believes it remains in the County's best interest to enhance the vendor disclosure forms as OIG had recommended.



Notifications

When OIG becomes aware of adverse information, such as the filing of criminal charges, concerning business entities in the metropolitan area, it checks to see whether these vendors are currently doing business, or registered, with Nassau County. If so, as a precaution, OIG alerts the Administration to the adverse information. OIG did so again during 2023. Additionally, in the course of its work, OIG may at times observe operational issues which appear to warrant quick corrective action and will so notify an appropriate party accordingly.

Stakeholder Training & Outreach

In September 2023, the Deputy Inspector General gave a live presentation, on the topic of *Guarding Against Fraud*, to more than 40 County employees attending annual procurement training. OIG information cards and fraud posters were also distributed.

In October, OIG posted on X (formerly Twitter) notice of the upcoming International Fraud Awareness Week promoted by the Association of Certified Fraud Examiners. In November, the OIG issued a release via LinkedIn, announcing OIG's support of Fraud Awareness Week, an initiative which champions the need to proactively fight and safeguard against fraud. OIG's release also provided the public with an overview of the mission and role of OIG, together with multiple forms of contact information to report fraud, waste, abuse or illegal acts in Nassau County government.

Year-round, OIG maintains a website with information about fraud, the OIG, the matters falling within OIG's jurisdiction, and the means of contacting OIG. Additionally, OIG's posters can be found at various County locations.

Join the Team; Be an Agent of Positive Change

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

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

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



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

Nassau County resident, President Theodore Roosevelt, 1903.

APPENDIX

- ◆ **OIG CONTACT INFORMATION**
- ◆ **OIG POSTER**
- ◆ **FREQUENTLY ASKED QUESTIONS ABOUT COMPLAINTS**



Nassau County OIG
1 West Street
Mineola, NY 11501

Main

(516) 571-1470

Hotline

(516) 571- IG4U

Inspectorgeneral@nassaucountyny.gov

www.nassaucountyny.gov/4747/Inspector-General

DO YOU SUSPECT
Waste
Fraud
Corruption or
Abuse



**Report Vendor,
Contractor, and
Employee Fraud, Waste,
Corruption, and Abuse to
Hotline# 516-571- IG4U (4448)**

**Nassau County
Office of the Inspector General**



Frequently Asked Questions about Complaints

You Can Be Part of the Solution

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

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

Q: Who may file a complaint with the OIG?

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

Q: What kind of complaints does the OIG investigate?

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

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

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

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

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

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

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

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

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

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

Q: What information should I include in my complaint?

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

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

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

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

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

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

A:

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

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

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

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

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

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

Q: What is an example of fraud?

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

Q: What is an example of waste?

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

Q: What is an example of misconduct?

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

Q: What is an example of abuse?

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