



## Nassau County Office of the Inspector General

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### ***MESSAGE FROM THE INSPECTOR GENERAL***

It is my privilege to present to you the first annual report of the Nassau County Office of the Inspector General (OIG), submitted pursuant to Section 192 of the Nassau County Charter. This inaugural report describes the Inspector General concept, the establishment of the OIG as Nassau County's independent, nonpartisan watchdog, and the commencement of our efforts to prevent and detect fraud, waste, corruption and abuse in County government. I am proud to report that during 2019 the OIG grew from an idea into an integral part of Nassau County government and the larger discussion regarding accountability, transparency, and independent oversight.

During this, our first, reporting period we successfully planned and established the key operational components of a wholly new oversight organization: formulating policies and procedures, engaging in stakeholder outreach, navigating myriad logistical requirements, and recruiting and hiring experienced, professional staff to execute our mission on behalf of the residents of Nassau County.

Substantively, our work commenced well before our office reached its planned staffing level, with complaints and tips being received almost from the inception of the office. During 2019 we received and evaluated numerous contacts and commenced reviews and investigations. While familiarizing ourselves with the County's operations, we also began reviewing the many contract awards proposed during the year and looked at a variety of associated processes. These activities led us to make a number of specific

recommendations to better promote fair, open, and competitive procurement activities – supporting the ultimate goal of effective and transparent use of public monies. Our initial recommendations are described in our attached report.

The OIG is committed to enhancing the public’s trust in its County government by providing impartial, objective, and professionally-informed oversight and to being the people’s trusted watchdog. While we are proud of the OIG’s progress to date, we have only just begun our mission. We look forward to continuing to refine our operations and undertaking new activities that will enable us to more fully realize that commitment.

On behalf of our office, I thank Nassau’s officials, employees, and residents for their support and encouragement during 2019. I urge you not to hesitate to contact us with your concerns and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jodi Franzese', written over a faint, illegible background.

Jodi Franzese

Inspector General

# Nassau County Office of the Inspector General



# 2019 ANNUAL REPORT

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

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# **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.”<sup>1</sup>*

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 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, readiness and accountability for property, civilian IG's 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 IG's 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 civilian IG's in the 1970's,<sup>2</sup> many states, counties and cities across the nation have instituted their own offices of Inspector General (OIGs) in recognition of the important and unique value they bring. While many OIGs have been in existence for decades, it is also common for new ones to be created, as occurred here in Nassau County. There are now approximately 160 state and local OIGs in the United States, in addition to over 70 OIGs covering virtually all federal agencies.<sup>3</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> The Federal government created its first civilian IG offices in the 1970's. 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.

<sup>3</sup> In a 2015 letter former United States Senator John Glenn (R-OH) said this about the passage of the law creating Federal OIG's 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."

## Inspectors General on Integrity and Efficiency (CIGIE).

OIGs 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 acts as a pillar of reform. Indeed, when an OIG maintains ongoing independent oversight of vulnerable governmental operations it can 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 and with integrity. Conversely, it discourages those who might engage in cronyism, 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.<sup>4</sup>
- **Providing Economic and Operational Benefits.** The existence of an OIG can provide many positive benefits, such as contributing to cost savings and increased effectiveness. For example, the deterrent effect of a robust IG’s office can result in significant (albeit difficult to quantify) savings,<sup>5</sup> such as preventing attempts at fraudulent billing or the delivery of substandard goods or services. An OIG’s sustained focus on business integrity and

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<sup>4</sup> A person’s willingness to engage in fraud 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.

<sup>5</sup> 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

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.<sup>6</sup>

- Providing a Trusted Resource and Objective Resolutions. People need an independent, trusted entity, free of political or partisan considerations, to bring sensitive concerns to. Government organizations also need a trusted process 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 precludes 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. The OIG utilizes different 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.

Strictly-audit organizations traditionally perform financial and/or performance audits. These typically have a broad focus, 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 whether programs are operating correctly and effectively. In contrast, investigative organizations typically have a targeted, forensic focus on detecting and exposing dishonesty and/or misconduct, with investigations sometimes based on specific allegations or suspicions of wrongdoing.

Often, OIG audit work pertains less to accounting matters than to performance assessment and management analysis. In any event, the 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

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<sup>6</sup> 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.

match reality, confirming receipt of deliverables, and gauging effectiveness and transparency of procedures. The OIG's audit function positions it to suggest systemic improvements and advocate for the use of best practices.

With respect to investigations, it should be noted that 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 Inspector General, former prosecutor Joseph Ferguson, 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.”<sup>7</sup>

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.

Moreover, law enforcement agencies investigate specific events or situations, where their role is largely limited to pursuing criminal conduct. OIGs 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.

Finally, external law enforcement agencies often lack the body of institutional knowledge that a dedicated oversight office, an OIG, builds over time. The OIG can bring to bear detailed understanding of organizational structures and history, roles, processes, and records systems. And the combined mission of an independent, non-partisan investigative and general oversight agency enables an OIG to serve the government in a much more compelling way than if either part of this mission stood alone.

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

# **About the Nassau County OIG**

## **Mandate and Mission**

The OIG has a broad mandate under the Nassau County Charter to prevent and detect fraud, waste, abuse and illegality in, or impacting, 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 an 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 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.
- 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 of prohibited political activity applicable to judges in the Rules of the Chief Administrative Judge of New York State.<sup>8</sup>

## **Authority, Powers and Functions**

To accomplish its mission the County Charter<sup>9</sup> 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

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<sup>8</sup> Nassau County Charter §187 (19).

<sup>9</sup> See especially Nassau County Charter §187.

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 County documents and records, and to issue directives requiring their production.
- Authority to obtain full and immediate access to 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.
- 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” for 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 notifies 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 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 possible criminal violations of law.
- Following prescribed procedures for the issuance of certain finalized reports.
- Issuing an annual report (this document).

## **IG Independence**

The Inspector General, who is appointed by super-majority vote of the County Legislature to a four-year term,<sup>10</sup> and removable only for cause by super-majority, is not subject to control or supervision by the County Executive. The Inspector General is authorized to exercise any of the powers granted on his or her own initiative.<sup>11</sup>

Section 189 of the County Charter requires the County Legislature to have a committee<sup>12</sup> 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

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<sup>10</sup> The Charter requires that investigations conducted by Nassau’s OIG comply with the Principles and Standards published by the Association of Inspectors General (AIG). The Principles and Standards also indicate that to establish and maintain the independence of Inspectors General they should be appointed to a fixed term of office, as Nassau County has done. While Nassau County’s four-year term is consistent with the DAO’s 2015 recommendation, it is shorter than what AIG recommends: “... *AIG believes that the minimum term should be five years and recommends a longer period of seven years to provide stability in the function.*” (commentary in AIG’s model legislation). OIG believes that the AIG’s position merits consideration.

<sup>11</sup> Nassau County Charter §187 (8).

<sup>12</sup> 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.

Legislature to review prior activities and discuss plans and objectives. The Inspector General’s authority to conduct investigations, audits, reviews and examinations does not apply to the Legislature. While the OIG is thus subject to general supervision by the Legislature, 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.

## **Our History**

The Nassau County Office of the Inspector General (OIG) came into operation in January 2019, becoming the first county-wide OIG in New York State.<sup>13</sup> The Office was established by County legislation enacted on a bi-partisan basis in December 2017.<sup>14</sup> The 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 first staff members, her two deputy inspectors general, were hired in February, and the balance of the initial staff were selected and hired over the next six months.

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. 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,<sup>15</sup> and

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<sup>13</sup> Erie County has had a County Medicaid Inspector General since 2012.

<sup>14</sup> Nassau County Charter, Article I-C (Sections 185 – 196).

<sup>15</sup> 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, the position of Commissioner of Investigations was not eliminated from the Charter at that time. While the post of

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.

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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.

While Nassau County's OIG was only recently created, the lineage of the Inspector General concept in the United States traces back well beyond 2015. Thus, at its inception, the Nassau County OIG immediately became part of an established, robust nationwide OIG community, with delineated professional standards, including those developed under the auspices of the AIG and, at the federal level, the CIGIE.

## **Building the OIG - The First Year**

### **Development and Implementation**

A major and necessary theme of OIG's first year was development and growth from concept to full operation. In addition to beginning its first investigative, review, and analytic work, OIG necessarily spent considerable time and effort during 2019 on an extensive range of start-up activities to ensure that OIG would be properly equipped to fulfill its mission and comply with professional standards.<sup>16</sup> Thus, while the Inspector General and Deputy Inspectors General began OIG's substantive work, they also focused heavily on numerous endeavors to build a strong foundation for the office. These efforts included:

- Organizational planning and needs assessment.

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Commissioner has remained vacant since the Inspector General was appointed, at this writing the law authorizing a Commissioner of Investigations remains in effect.

<sup>16</sup> E.g., Principles and Standards for Offices of Inspector General ("Green Book"), promulgated by the Association of Inspectors General.

- Acquisition of office space, equipment and many other resources.
- Recruitment and hiring of initial staff.
- Introductory meetings with officials such as members of the Legislature, Legislative majority and minority counsel, the County Executive, Chief Deputy County Executive, Deputy County Executives, County Attorney, County department heads, and Chief Procurement Officer.
- Establishing necessary working relationships within County government.
- Outreach to other government officials and other stakeholders, including but not limited to NIFA, County Comptroller's Office, Legislative Budget Review Office; prosecutors, other OIGs, and members of the public.
- Gathering information and assessing best practices from fellow members of the national Inspector General community, especially as to their structures, programs, practices, policies, and written products.
- Development and implementation of OIG policies, operating protocols, forms, and records-keeping.
- Familiarization with County systems and practices, including procurement related processes.
- Strategic planning for near-term and future initiatives.
- Development of a process and format for providing contract review statements and reports to the County Legislature.
- Arranging access to County records (both electronic and hard copy).
- Issuance of directives for: notifying OIG of procurement selection committee meetings, accessing information, and for mandatory reporting of fraud and other matters to the OIG.
- Launch of the OIG's telephone hotline, including issuance of press release.
- Design and launch of OIG's website (linked to the County's website).
- Design and implementation of OIG's self-guiding online complaint form.
- Exploration of electronic case-management systems.
- Establishment of a presence on Twitter and LinkedIn.
- Design, printing and distribution of OIG fraud-reporting posters.
- Design, printing and distribution of informational hand-outs describing the OIG and its mission.
- Joining the Association of Inspectors General, a professional peer group, at both the national and local chapter levels.

## Staffing

During 2019, OIG recruited and hired its initial staff members. As of the close of the calendar year, OIG consisted of seven persons, as shown below:<sup>17</sup>

- Inspector General - 1
- Deputy Inspector General- General Counsel - 1
- Deputy Inspector General- Investigations/Operations - 1
- Assistant Inspectors General - 2
- Oversight Specialists - 2

While the office is new, the Inspector General and six staff members hired during 2019 collectively possess over 125 years of experience in governmental oversight and/or law enforcement.

In an independent, stand-alone oversight organization of 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 OIG team consists of professionals whose prior occupations reflect a range of pertinent disciplines and relevant skills: investigators, auditors, attorneys/prosecutors, federal agents (including a Special Agent-in-Charge), deputy inspectors general and senior inspector general.

OIG staff have previously worked for a variety of respected institutions, including:

- New York City Department of Investigation
- Internal Revenue Service, Criminal Investigation Division
- U.S. Department of Transportation, Office of Inspector General
- Metropolitan Transportation Authority, Office of the Inspector General
- District Attorneys' Offices of Suffolk, Queens and Bronx Counties
- Nassau County 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 attained numerous professional certifications, specialized training and advanced degrees, including:

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<sup>17</sup> To conserve funding for direct operational services, the OIG has deferred hiring administrative support staff.

- Admission to New York Bar - 2
- Certified Inspector General (CIG) - 2
- Certified Inspector General Auditor (CIGA) - 2
- Certified Inspector General Investigator (CIGI) - 1
- Certified Fraud Examiner (CFE) - 2
- Certified [Asset] Protection Professional (CPP) - 1
- Graduate, Federal Law Enforcement Training Center (FLETC) - 2
- Graduate, NYPD Criminal Investigation Course (CIC) - 1
- Graduate, NYPD Internal Affairs Training Course – 1
- Juris Doctor (Law) Degree - 3
- Master’s Degree - 3

The most crucial resource of an OIG is its staff. One of the challenges faced by OIG during its initial year was that of determining an appropriate staffing level to accomplish its mission in a timely and comprehensive manner compliant with professional standards. The DAO’s report, which recommended the establishment of an OIG serving “as an independent department,” stated in part that:

The size and financing of this office should match the scope and import of its task - to guard against and root out corruption and improper influence in the procurement process and to investigate improprieties within the executive departments.

OIG’s initial headcount was geared to a funding level determined by the County prior to hiring the Inspector General. As the OIG commenced its work in 2019, it was able to better gauge its staffing needs for the near term. OIG also benchmarked its personnel resources against that of established OIGs serving municipalities of roughly comparable magnitude (population and expenditure levels). In terms of headcount, we observed that OIG’s staffing level is relatively small in comparison to such other OIG’s in the nation. OIG determined that additional staff would be necessary to provide enough multi-disciplinary resources to timely address simultaneous priority assignments (including, but not limited to, reviewing multiple prospective contract awards). Mindful of the County’s financial constraints, OIG submitted a justified budget request in 2019 to support a modest augmentation of staff in 2020. We are pleased to report that request was approved by the Legislature, and the OIG presently anticipates hiring three additional persons in 2020, which would bring OIG’s total headcount to 10.

## **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, of County actions, procedures, and other matters of concern. During 2019 the newly-created OIG received in excess of 55 complaints, tips and other contacts, including allegations of misconduct, fraud and other improprieties.

The OIG receives complaints and tips from members of the public, County employees and vendors via a variety of means: from our website, email, telephone Hotline, letter, and in person. Complaints may allege fraud, corruption, waste of funds, abuse of position, or raise other concerns. All complaints and tips received by the OIG are reviewed to determine the appropriate disposition of each. Among other considerations, OIG evaluates each complaint or tip to determine whether it falls within our 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 limited resources, 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 full investigation, audit or other review by OIG. The Inspector General may close others after a preliminary inquiry fails to substantiate the allegations or finds no viable issues to pursue, or may refer the matter to the appropriate County department or other agency for its appropriate action. During 2019 OIG initiated 23 preliminary inquiries, investigations or reviews. The OIG forwards complaints to other organizations if its evaluation or preliminary inquiry reveals that the issues raised fall outside the OIG's jurisdiction or would be more appropriately handled by another entity. During 2019, OIG referred 10 matters to other entities.

The OIG also frequently assists members of the public who call looking to find out which governmental organization (County, town, state, federal, etc.) they should contact to obtain information or services.

Examples of 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 money or inefficiency.
- False documentation, certifications, licenses, qualifications.
- Whistleblower reprisal.
- Any other activity suggesting wrongdoing or impropriety involving Nassau County projects, programs, operations, employees, officials, contractors, vendors, or anyone who gets 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 federal, state, or local law, rule or regulations.

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 action<sup>18</sup> against a public employee regarding the employee’s

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<sup>18</sup> “Personnel action” under Section 75-b means “an action affecting compensation, appointment, promotion, transfer, assignment, reinstatement or evaluation of performance.”

employment because the employee discloses to a governmental body<sup>19</sup> 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.

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

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<sup>19</sup> 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.

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.<sup>20</sup>

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, or attempting to retaliate, against any person for assisting, communicating or cooperating with the Inspector General. It 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**

OIG believes that key methods for preventing and exposing serious acts of wrongdoing involve not only protecting but affirmatively encouraging whistleblowers in the County

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<sup>20</sup> 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.

government. This should include sending an unmistakable message that, for public servants, “looking the other way” is not acceptable behavior in Nassau. Each public servant should have the explicit legal duty to report conduct involving corrupt, fraudulent or other unlawful activity affecting the County.

OIG observed that, 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 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.<sup>21</sup>

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,<sup>22</sup> the crucial obligation of county employees to likewise report such matters to the Inspector General largely exists not as law but in the form of a guidance memorandum from the Deputy County Executive for Compliance. The Countywide Procurement and Compliance Policy additionally provides that public employees and elected officials “having responsibility for contracting procurement” shall “report waste, fraud, abuse and corruption and unethical practices” to the Inspector General. An executive order 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, in OIG’s view they do not provide the gravity or permanence of a statutory mandate, nor do they cite a penalty for noncompliance.

The only affirmative duty under law to report wrongdoing to the Inspector General, of which OIG is aware, is limited and appears 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:

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<sup>21</sup> Additional whistleblower protection is afforded by New York Labor Law §740 in certain circumstances pertaining to substantial and specific danger to public health or safety, or health care fraud.

<sup>22</sup> 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.

“if such review indicates an apparent improper government action, take appropriate corrective measures *and where appropriate, refer such information* to the appropriate investigative authority, including but not limited to . . .” (emphasis added).<sup>23</sup>

OIG therefore submits that Nassau County would be better served by strengthening its reporting requirements by codifying them into law directly applicable to all of its public servants. New York State law has a model worthy of consideration, which creates an affirmative legal duty for state officers and employees. New York’s statute, codified within the Executive Law, provides (with respect to officers and employees under the State OIG’s jurisdiction):

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.<sup>24</sup>

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<sup>23</sup> Nassau County Administrative Code § 22-4.4 (3)(b). The Inspector General is among the authorities in the non-exhaustive list.

<sup>24</sup> New York Executive Law § 55(1). This provision is not unique to New York State’s government. 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 (i) 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 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.

OIG believes that this sort of mandate is of such fundamental significance that Nassau County would benefit from a similar law, directly imposing the affirmative duty to report fraud and corruption, etc., upon all public servants of the County.<sup>25</sup>

## **Investigations**

The OIG conducts both criminal and administrative (non-criminal) investigations into the conduct of County functions, transactions, contracts, programs, vendors, officials, employees and departments. 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 tips or complaints, 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 Executive, the Comptroller, or other officials. Some investigations may be conducted jointly with other investigative or law enforcement agencies.

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

## **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:

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<sup>25</sup> In adopting such law, it would also be important to ensure that whistleblower protection is broad enough to match the scope of the all information required to be reported.

- **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 remedial actions or commence prosecutions. OIG can only provide information and recommendations to the organizations that are authorized to do so, the decision-makers.

If an investigation reveals possible violations of state, local or Federal criminal 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 typically perform two types of audits, financial audits and performance audits, also known as program audits. A financial audit looks at the use of funds for programs and operations, e.g., to examine the costs involved and how the money was spent. A performance audit focuses on County programs and operations, in terms of such things as their effectiveness, efficiency, transparency, and internal controls/risk management. Audit reports may recommend corrective measures or improvements. 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 containing findings and recommendations will typically be directed to the County Executive or other

appropriate management officials for response and provided in final form to the Legislature and other officials.

## **Reviews**

OIG also conducts various types of reviews where a full audit or investigation is inappropriate or unnecessary and which facilitate more immediate and timely feedback to decisionmakers. Review types include, but are not limited to, screening of proposed vendor contract awards, inspections as to whether operations/programs are following established policies, procedures and guidelines, and evaluations of internal controls, 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 or accountability.

## **Procurement/Contracting Oversight Activities**

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 purchases/contracting reflect 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.

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.
- 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 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 vendor is performing or has performed services.
- Examination of 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.
- Notifying the Administration of the discovery of potentially adverse information about current vendors.
- Conducting investigations, audits, and other reviews as deemed appropriate.

During 2019, OIG reviewed for familiarization and information numerous proposed contract award packages prior to approval by the Legislature. OIG submitted to the Legislature 13 written statements of the results of selected contract reviews. In some of those instances, OIG reported to the Legislature that during the course of its review OIG identified opportunities for improvement in the procurement process. These were addressed in advisory reports, described below. Additionally, OIG provided the Legislature with a report concerning a proposed vendor, and in another matter, notified the Administration of its discovery of adverse information concerning a current vendor. These matters are also described below.

OIG's monitoring of procurement-related activity during 2019 also included attending 29 selection committee meetings, four departmental contracting officer teleconferences conducted by the Chief Procurement Officer, a procurement training meeting, and both

2019 County procurement policy meetings, as well as a meeting of the NIFA Board of Directors.

During 2020, we anticipate expanding our procurement/contracting oversight activities, including conducting more reviews of contract awards slated for vote.

## **Reports and Recommendations Issued**

### **Background**

The District Attorney’s *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.” The report noted in part that

The systemic deficiencies, antiquated technology, and paucity of oversight continue to expose Nassau County taxpayers to significant risk of contracting fraud and corruption and call for immediate, comprehensive reform.

One of the greatest vulnerabilities of the County is its predominately decentralized procurement process.

Our inaugural year was a period of learning and initial assessment. From the OIG’s observations during its first year, it is apparent that the County has made many important improvements in its procurement policy and processes since the state of affairs detailed in the DAO’s 2015 report. It is noteworthy that, among other things, the County created the centralized position of Chief Procurement Officer and reestablished the post of Deputy County Executive for Compliance. And while there have been many harmonizing steps and laudable efforts to date, it was quickly evident to OIG that a significant extent of the County’s contracting process nonetheless remains decentralized.

As the OIG began conducting reviews of potential contract awards, it became apparent that, although the County has already instituted numerous positive changes, there remain multiple areas for improvement in the County’s procurement/contracting processes. OIG accordingly conducted reviews of some of these issues and made a number of specific recommendations to the Administration, which are described below. We are pleased to report that in each instance, the Administration was receptive to our recommendations.

Based on our observations during our first year, the OIG also identified a number of potential topics for future exploration. OIG anticipates expanding its look into other aspects of the procurement/contracting processes during our second year and making

further recommendations to reduce the County’s vulnerability and enhance its economy, effectiveness and transparency.

## **Recommendation – Institute a Vendor Code of Ethics**

Shortly after commencing operation, OIG ascertained that the County lacked a Vendor Code of Ethics (vendor code). A vendor code is important in part for setting out the ground rules for, and placing vendors on notice of, the ethical standards and conduct they are expected to conform to in doing business, or seeking to do business, with the County. OIG accordingly recommended to the Administration that the County adopt a vendor code. Additionally, OIG provided as an example of best practice, a comprehensive vendor code in use by a New York public agency, as well as an additional provision used by the Federal government (mandating the reporting of overpayments, fraud, conflict of interest, bribery or gratuities).

The Administration accepted our recommendation and implemented its first-ever vendor code in June 2019, with provisions largely modelled upon the sample text provided by the OIG. The new Vendor Code of Ethics appears in the Appendix following this report.

## **Recommendations for Revising the Vendor History Disclosure Form**

OIG conducted a detailed examination of the County’s existing Business History questionnaire form (as well as certain contemplated revisions the Chief Procurement Officer had circulated for comment). This form is a background questionnaire that prospective vendors complete and submit to the County in furtherance of the responsibility determination process. OIG closely compared the County’s existing Business History form to similar tools in use by other governmental entities. Based on our review, OIG provided the Chief Procurement Officer an extensive set of recommended supplemental revisions of that form, involving modification of existing questions and the vendor’s certification language, as well as the addition of specified pertinent questions.

OIG’s recommendations were designed to enhance the precision of the questions posed to vendors, improve consistency of phrasing, and most significantly, better capture the range of information that would be relevant to the County in making its determination of vendor “responsibility” (a key factor in eligibility for contract award). Among the additional questions were those addressing topics that the DAO had noted the County lacked, such as related public officers and the vendor’s debarment history. OIG also advised that, generally, many of the recommended changes would be applicable as well to the Principal Questionnaire Form (the companion form submitted by each of the principals of vendor companies).

The Chief Procurement Officer was receptive to our recommendations. OIG will follow-up during 2020 to assess the status and extent of adoption of the recommended changes.

## **Advisory Report: Bid Evaluations by Design Consultants**

County procurement policy requires that all individuals serving as either voting or non-voting members of procurement selection committees, which evaluate the proposals of prospective vendors, execute a set of certifications prior to receiving the proposals. These certifications are intended to ensure that all committee participants conduct themselves ethically, maintain confidentiality, and have no known conflicts of interest with respect to the vendors they will evaluate.

These requirements are designed to ensure fairness and objectivity in the vendor selection process. More specifically, the participants certify in part that they agree to abide by applicable law, executive orders and County policy on ethics, conflicts of interest and proper conduct when evaluating proposals received for County contracts; certify that they will not discuss or reveal any information concerning selection proceedings to unauthorized persons; that they do not knowingly have a conflict of interest as to any of the vendors; and agree that if at any time they discover that they have either a real or an apparent interest in, or connection with, a company or individual submitting a proposal, they will promptly report that fact to a designated official. The latter certification form provides guidance as to situations that could create the appearance of a conflict of interest.

In some instances, the Department of Public Works (DPW) uses the services of design consultants contracted by the County, to perform a somewhat parallel role. The County uses design consultants to help evaluate proposals for construction services. Typically, these consultants review to ensure that the bid shows an appropriate understanding of the project elements, and/or render a professional opinion as to whether the prospective contractor has adequate expertise and financial capability to be reasonably confident it can successfully complete the project. OIG was advised that design consultants typically perform that function by contacting references, reviewing previously completed projects, and checking the contractor's insurance, bonding, and equipment. In an instance reviewed by the OIG, the consultant's scope of work included the provisions that it "review all bid proposals received and provide representation at the pre-award meetings" and "[s]ubmit a written recommendation regarding award of the construction contracts." DPW personnel described the design consultant's role as checking the facts and providing their professional opinion.

Obviously, the impartiality of the consultants in this role is essential, as is the need to maintain confidentiality. However, unlike the requirements governing selection committee members, existing County policy lacked a similar requirement that its consultants submit certifications similar to those executed by selection committee

members, or otherwise disclose whether they have a financial interest in, or other potential conflict of interest with respect to, the contractors they are tasked with evaluating. This was so even though design and construction firms often work together on projects.

Additionally, the County's Code of Ethics<sup>26</sup> provides in part that no agent of the County shall influence the making, or fail to recuse himself or herself from the discussion and approval process of a County contract in which he or she "is interested directly or indirectly as principal, agent, officer, or owner of stock in a corporation." In the absence of a requirement for design consultants to disclose any potential conflicts of interest as to firms whose offers they are evaluating, DPW was unable to determine whether the consultants, the County's agents, were in compliance with the Code of Ethics.

OIG accordingly recommended that where a County vendor, such as a design or engineering consultant, is tasked with evaluating, rendering an opinion, and/or making a recommendation as to prospective vendors:

- The County should require that the vendor placed in such an advisory role execute a conflict of interest certification, analogous to those required of selection committee members.
- The certification should include a declaration as to whether the consultant has any financial, organizational, or other interest associated with any bidder or proposer that it will evaluate, as well as the other bidders or proposers responding to the solicitation.
- The scope of the certification should include financial ties and personnel connections between the firms, as well as collaboration by the firms on any current or planned projects. Further as impartiality is essential, consideration should also be given to requiring disclosure of collaboration on projects completed in the recent past.
- In the event that any conflicts or potential conflicts of interest are disclosed, the procuring department or the Chief Procurement Officer should document its decision whether and to what extent, the consultant will be allowed to participate in the evaluation or otherwise render its opinion.

The Administration accepted our recommendations and supplemented the procurement policy. The Chief Procurement Officer issued a memorandum requiring that all consultants and other non-County individuals who will be given access to bids, proposals, or related information for any purpose during the vendor selection process, must execute certifications as to conflicts of interest and maintaining strict confidentiality as to bids,

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<sup>26</sup> Nassau County Charter § 2218 (9).

proposals and the evaluation process.

## **Advisory Report: Bid Withdrawals for Claimed Clerical Errors**

On occasion, a bidder (prospective vendor) may raise a claim after its formal sealed bid has been opened by the County but before contract award has been made, that the bidder discovered a clerical error in the price it submitted, and as a result wants to withdraw its bid. The error in this scenario would not be of the sort that could have been detected by the County. In sum, withdrawal of bids due to bona fide error may be allowed when requested timely, is of such magnitude that enforcement would be unconscionable, is documented properly, and justified to the satisfaction of the County, in accordance with state law.<sup>27</sup>

OIG learned that while the Countywide Procurement Policy addressed certain bid withdrawal and mistake matters, it did not explicitly address the situation where a bidder wants to withdraw its bid based on its assertion that it discovered a pricing error after its bid was opened. While vendor requests to withdraw bids may well be based in good faith on clerical errors, from a risk management perspective, requests for bid withdrawal can also conceivably arise from other reasons, including judgment errors and even collusive bidding schemes. Moreover, care should be exercised to limit withdrawals to appropriate circumstances, because awarding the contract to the next lowest bidder may in some cases result in a significantly higher cost to the County, while rebidding the contract can result in significant delay to project completion.

While the County had not promulgated written guidance, the Department of Public Works (DPW) advised OIG that in the event of a claimed bid mistake on its contracts it follows the provisions of New York General Municipal Law section 103 (11) and associated case law. OIG observed that other governmental entities such as the City of New York and the Metropolitan Transportation Authority, as well as the Federal government, provide written guidance for addressing the circumstances in which vendors may be permitted to withdraw their bids based on claimed errors.

Having uniform guidance and standards is advisable, especially in a decentralized contracting environment, such as Nassau's. OIG accordingly provided the following set of recommendations to the Administration:

- The County should enhance its countywide procurement policy by providing instruction (for all agencies) for handling of pre-award requests to withdraw bids due to claimed errors, consistent with applicable state law.

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<sup>27</sup> New York General Municipal Law §103 (11).

- The above enhancement should provide guidance regarding the process to be followed upon receipt of a mistake-based bid withdrawal request, including:
  - a. Specify time limits for vendor notification of mistakes, and for submission of supporting documentation.
  - b. Delineate roles and responsibilities, including decision-making authority.
  - c. Establish records-keeping requirements.
  - d. Describe the criteria for allowing withdrawal of a bid, including that the bidder submits clear and credible evidence of a good faith, inadvertent clerical error, and of its intended bid (as well as of any intended markup, discount or other differential).
  - e. Require, for evidentiary purposes, that the bidder submit to the County within a specified time, original, complete documents demonstrating the error and the intended correct bid, and a signed explanation by a principal of the vendor as to how the error occurred, with an attestation that all information and documents are true, accurate and unaltered.
  - f. Consider having the option of holding a pre-decisional hearing with the vendor.
  - g. Generate a record-of-decision memorandum outlining the circumstances and rationale for allowing or declining a bid withdrawal.
  - h. To promote uniformity and consistency of application across the County government, require the concurrence of the Chief Procurement Officer for all approvals of withdrawals.
  - i. Maintain a central record of bid withdrawal requests and decisions, with the capability of identifying the extent to which a given bidder has made such requests.

The Administration accepted our recommendations and issued a bid withdrawal policy consistent with those recommendations.

### **Advisory Report: Vendor Adverse Information in Staff Summaries**

In accordance with New York State law and County procurement policy, the County may only award a contract to a vendor that has demonstrated that it is “responsible.” A

responsible vendor is one which has the capability in all respects to fully perform the contract requirements as well as the business integrity to justify the award of public tax dollars. County departments are required by policy to conduct vendor responsibility reviews for proposed contract awards. The intent of a responsibility review is to determine in part if there exists any material adverse information (MAI) impacting the vendor's capacity or integrity. Examples of MAI include criminal convictions, civil judgments, license revocations, debarments, violations, investigations, negative performance evaluations, liens and bankruptcies. MAI may appear in the vendor's responses to questionnaires it submitted to the County or may be independently discovered by the County.

In some situations, the County may want to proceed with a contract award to a vendor even though MAI was found. For example, the vendor may have demonstrated to the County's satisfaction that it implemented corrective action or measures to prevent reoccurrence of the conduct or event at issue. In these instances, the administration might find a vendor to be responsible and eligible for contract award notwithstanding the existence of MAI.

As part of the legislative approval process (for contracts or purchases valued at over \$100,000) the procuring department submits a Staff Summary, which is typically one of the first documents in the package provided to the Legislature in advance of voting on the item. In the course of reviewing legislative procurement packages OIG observed that MAI was rarely referenced in staff summaries. OIG found that while County policy requires that the summaries provide the "procurement history," there was no explicit mandate that they disclose (i.e., to the Legislature) whether the department found the vendor to be responsible notwithstanding the existence of MAI, nor document whether the Chief Procurement Officer reviewed and concurred with the decision.

OIG also found that the existence of MAI discovered by the County (i.e., independent of the vendors' own disclosures) is usually not included in the legislative package. Rather, the evidence of adverse information in the package is typically limited to facts self-disclosed by the vendors in their business history and principal questionnaires, and possibly in associated follow-up correspondence with the County. Unlike the staff summary, at or near the top of the package, the location of these documents varies and can be deep within the voluminous materials comprising the package.

Given the importance of vendor responsibility determinations, the existence of MAI is a significant facet of the procurement history which merits inclusion in the staff summary. Moreover, including this information in the staff summary would increase transparency and promote more efficient, informed decision-making by the Legislature. OIG accordingly recommended to the Administration that:

- Staff summaries incorporate either a statement or check box as to whether MAI regarding the proposed awardee was identified.

- In cases where MAI was identified, the staff summary should contain a statement indicating that (1) the department head found the vendor responsible for award notwithstanding the MAI, and (2) the Chief Procurement Officer reviewed and approved the decision.

The Administration advised the OIG that it concurred with these recommendations and would revise its procedures accordingly. In January 2020, it did so, via the issuance of a memorandum captioned Contract Package Material Adverse Information Policy.

### **Contractor Review Report: Vendor's Prior Work**

A County Legislator requested that the OIG explore her concerns about the quality of prior work performed by a prospective awardee of a Department of Public Works (DPW) contract. OIG conducted a review and provided its report to the Legislature, as summarized below.

The prior work of concern was construction services provided by the vendor in 2010 to a local municipality within the County. The subject vendor was the general contractor on the municipality's project. The legislator asked OIG to investigate (1) why the vendor paid part of a civil settlement in connection with the prior matter, (2) the extent of the vendor's liability or exposure in the matter, and (3) whether the proposed vendor was a reliable contractor.

As the OIG learned from a review of records and interviews, the municipality's project experienced failure of seven of 200 fixing bolts after construction. The municipality commenced litigation against two design engineering firms, and as a result of denials and affirmative defenses asserted by those firms, the subject vendor as well as the project engineer and inspector were added to the litigation. With respect to the Legislator's question as to why the vendor paid a portion of the settlement, OIG learned that the settlement agreement and its terms were sealed and, due to a confidentiality agreement, the individuals interviewed by the OIG were not at liberty to provide information as to any admissions of liability or fault.

With respect to the extent of the vendor's liability or exposure, OIG obtained and reviewed an engineering study which concluded there were design flaws which may have caused the bolt failures. This finding was corroborated by a subsequent independent engineering review. Both reports determined the vendor did not install tie-rods in the proper position, which possibly contributed to the bolt failures, but neither report pin-pointed the vendor's faulty installation of the tie-rods as the sole cause of the bolt failures. OIG's review of available information did not reveal a history or pattern of similar situations involving the vendor.

Regarding the specific question regarding whether the vendor is “reliable,” the review noted that the standard for contract award under County procurement policy is in part whether the vendor is a “responsible” contractor. A responsible contractor is one who has the capability in all respects to fully perform the contract requirements and the business integrity to justify the award of public tax dollars. The responsibility determination is made by the Administration (not the OIG). Factors affecting a contractor’s responsibility status include, in part, a satisfactory history of performance, technical qualifications, experience, organization, resources and expertise necessary to carry out the work. OIG noted that the County’s determination of responsibility did not appear within the materials submitted to the Legislature.

## **Notifications**

### **Notification of Criminal Conviction of Vendor**

OIG learned, and so alerted the Administration, that the president-and-chief executive officer of a vendor recently awarded a contract to maintain and repair certain County equipment, had been convicted earlier in 2019 on a criminal charge related to the company’s role as a vendor to a town government in another county. The defendant had offered for filing documents claiming reimbursement for the rental of equipment that the vendor owned.

In OIG’s view, the recent conviction raised an issue as to the business integrity of the vendor, one of the key factors for a business to be deemed a “responsible” vendor. In addition, Nassau County vendors are required to update their Business History and Principal Questionnaire forms with all changes of a material nature. However, at the time of the OIG’s notification to the Administration, the vendor had not reported the conviction.

OIG also notified the County that the vendor had emailed the client town government reporting that the defendant retired from the business and that a new company had been formed and had assumed the role of serving and supporting the vendor’s clients. OIG noted that according to the email the new company would consist primarily of the same management team and employees (other than the defendant), and that the new Chief Executive Officer had been integrally involved in the inner workings and management of the former company.

As of this writing the Administration is in the process of taking follow-up action in response to our notification.

## **Notification of Apparent Non-Compliance with Agreement**

OIG learned, and so notified the Administration, that pursuant to the terms of a license agreement between the County and a licensee company, the licensee was apparently required to complete certain improvements at a County facility within a specified timeframe, but had not done so, either within the specified time frame or thereafter. The County was in litigation with the licensee at the time of the OIG's notification; the litigation remains pending.

## **Other Activities and Accomplishments**

### **Stakeholder Outreach**

Stakeholder outreach and education about the mission of the OIG is a fundamental part of the framework supporting our efforts to promote fraud prevention and detection. To that end OIG took a variety of steps during 2019, including having numerous meetings with members of the Legislature and its staff and with Department heads and other senior County officials, as well as:

- Placing dozens of OIG fraud reporting posters in County facilities.
- Distributing dozens of OIG awareness cards to Legislative meeting attendees and others.
- Attending a number of meetings of the Board of Ethics and speaking to its members.

Additionally, OIG executive staff delivered three types of public presentations:

- Presentation to a public group: The Inspector General spoke about the mission and responsibilities of an OIG at a local civic association meeting and answered questions from Nassau County residents.
- Presentation to vendor community: The Deputy Inspector General/General Counsel spoke about the mission of the OIG at the County's live-and-webcast Vendor Day event.
- Presentation to the local oversight community: The Inspector General was the keynote speaker at a conference of the Long Island Chapter of the Association of Certified Fraud Examiners, where she explained the creation and mission of the OIG.

In 2020 and beyond, the OIG will strive to increase its outreach and education efforts with County employees and the public. These efforts are intended to encourage all concerned persons to notify the OIG about instances of suspected corruption, fraud, waste, abuse, ethics violations, and other issues.

## **Intergovernmental Cooperation**

During the course of its activities in 2019, OIG interacted with numerous law enforcement, regulatory, and oversight organizations, including the following:

- Nassau County District Attorney's Office
- Suffolk County District Attorney's Office
- Nassau County Comptroller's Office
- Nassau County Police Department
- Nassau County Interim Finance Authority
- United States Department of Justice
- Amtrak OIG
- Broward County (FL) OIG
- Jefferson Parish (LA) OIG
- Massachusetts OIG
- Miami-Dade County (FL) OIG
- New York City Business Integrity Commission
- New York City Department of Investigation
- New York Metropolitan Transportation Authority OIG
- New York State OIG
- Palm Beach County (FL) OIG
- Port Authority of New York-&-New Jersey OIG
- Association of Inspectors General

## **Moving Forward – The Future**

Although we have learned a great deal about the County's operations during our initial year and are proud of the OIG's progress and accomplishments to date, we know that we have only begun our mission. For 2020 and beyond, the OIG anticipates expanding its look into other aspects of the procurement/contracting processes and making further recommendations to reduce the County's vulnerability and enhance its effectiveness and transparency. We also plan to ramp up our outreach/education program, and to review a greater number of proposed contract awards, while continuing to maintain flexibility to be responsive to emergent situations. As we proceed, we will continue to refine and implement practices to better enable us to realize our commitment to promote integrity and accountability in Nassau's government.

Corruption and fraud have a profound effect on the efficiency and effectiveness of government; on how it serves its people. 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, building 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 and concerns as well as your suggestions for improving the OIG.

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# **APPENDIX**

- ❖ **PRESS RELEASE ANNOUNCING OIG HOTLINE**
- ❖ **OIG POSTER**
- ❖ **FREQUENTLY ASKED QUESTIONS ABOUT COMPLAINTS**
- ❖ **VENDOR CODE OF ETHICS**



**Nassau County  
Office of the Inspector General**

JODI FRANZESE  
INSPECTOR GENERAL

**FOR IMMEDIATE RELEASE  
TUESDAY, MAY 14, 2019**

**CONTACT: CONSTANCE GONZALEZ-HOOD  
DEPUTY INSPECTOR GENERAL  
516-571-0031**

**Nassau County Inspector General Launches New Webpage and Hotline  
for Reporting Fraud, Corruption, Waste, and Abuse**

The newly created Nassau County Office of the Inspector General (OIG) has launched its public webpage and complaint Hotline, **516-571-IG4U (4448)**. The webpage offers information about the mission and responsibilities of the Office and, more importantly, guides the public on how to make a complaint regarding suspected fraud, waste, abuse, or illegal acts in Nassau County government. The webpage has a user-friendly online complaint form, which affords the public the ability to immediately report bad acts of vendors, contractors, and public servants.

Nassau County residents, employees, vendors, and contractors who want to become part of the solution now have multiple methods of getting information directly to the Office of the Inspector General.

Complaints regarding fraud, corruption, waste, abuse, and illegal acts involving County employees, contractors, and vendors can now be made to the OIG via any of the following ways:

- Web: <https://www.nassaucountyny.gov/4697/Inspector-General>
- Hotline: **516-571-IG4U (4448)**
- email: [InspectorGeneral@nassaucountyny.gov](mailto:InspectorGeneral@nassaucountyny.gov)
- Mail: **Office of the Inspector General, 1 West Street, Mineola, NY 11501**

*“Good government is everyone’s business. The public, by serving as the Inspector General’s ‘eyes and ears,’ plays a critical role in helping us achieve our mission to fight corruption, fraud, waste, and abuse. If you know of, or suspect, improper use of taxpayers’ dollars, please report this to my Office. Your complaint, call, or email could be the one that saves the County millions of dollars. The choice is yours.” said Nassau County’s first Inspector General, Jodi Franzese.*

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###

**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**

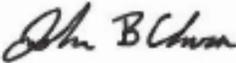
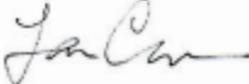


**LAURA CURRAN**  
NASSAU COUNTY EXECUTIVE

# NASSAU COUNTY



# Vendor Code of Ethics

<b>POLICY/PROCEDURE TITLE:</b> Nassau County Vendor Code of Ethics	<b>DATE ISSUED:</b> June 5 <sup>th</sup> , 2019
<b>DEPARTMENT ISSUING:</b> Executive – Compliance	<b>AUTHORIZED and SIGNED BY:</b>  Deputy County Executive For Compliance  County Executive

- POLICY:** The Office of the Nassau County Executive recognizes the importance of the vendor community in helping the County provide necessary services for the residents of Nassau County. It is the policy of the County Executive to ensure that all vendors doing business with Nassau County operate under the highest standards of legal and ethical conduct.
- PURPOSE:** To set forth a Code of Conduct for vendors to ensure that Nassau County Vendors are conducting their business with integrity, ethics, and compliance with all applicable laws and regulations.
- SCOPE:** All vendors doing business or seeking to do business with Nassau County as specified in the Code.



# Vendor Code of Ethics

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## Vendor Code of Ethics

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## Vendor Code of Ethics

### Chapter 1: DEFINITIONS

As used in this Code, the following terms have the following meanings:

**Adverse Job-Related Action** includes any material alteration to existing terms, conditions, and privileges of employment, such as dismissal, demotion, suspension, compulsory leave, disciplinary action, creation of a hostile work environment, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, reduction in compensation, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected employee.

**Contact** means any oral or written communication with any Nassau County Employee, other than the Designated Point(s) of Contact, where it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the subject of a County procurement.

**Designated Point(s) of Contact** means the individual(s) designated by the County to be a Vendor's only contact with Nassau County following the public advertisement of a solicitation or the issuance of a request for a bid, proposal, or quote for small purchase, until the award of a resulting contract and, where applicable, approval by the County Legislature. This timeframe, further defined in the State Procurement Lobbying Law, is also known as the Restricted Period.

**Nassau County Employee** means any officer, official or employee of Nassau County.

**Family Member** means (i) a Nassau County Employee's Spouse, Domestic Partner, Child, Sibling or Parent; (ii) a person who is a direct descendant (or the spouse of a direct descendant) of a Sibling of the Nassau County Employee or a Sibling of the Nassau County Employee's Spouse or Domestic Partner; or (iii) a person living in the same household as a Nassau County Employee.

**Gift** means the transfer, without equivalent consideration, of anything of benefit, tangible or intangible, having more than nominal value, including, but not limited to, cash, loans, forbearance,



## Vendor Code of Ethics

services, travel, gratuities of any kind, favors, money, meals, refreshments, entertainment, hospitality, admittance to private clubs, use of time-shares, personal use of the Vendor's facilities, promises, tickets to entertainment or sporting events, weekend trips, golf outings, loans of equipment, or other thing or benefit. A Gift need not be intended to influence or reward any individual or entity.

**Nassau County Code of Ethics** means Nassau County Charter Section 2218, and the rules and regulations promulgated thereunder as may be amended or modified.

**Participating Employee** means any Vendor employee who engages in any written or oral communication of a non-clerical or non-administrative nature with Nassau County or with a Nassau County Employee(s) as part of or in connection with the procurement.

**Participating Nassau County Employee** means any Nassau County Employee who the Vendor knows, has reason to know, or can reasonably anticipate is involved in a specific procurement, in either a direct or decision-making capacity, but not in a clerical capacity. This includes but is not limited to the Designated Point of Contact, the project manager, the project manager's staff to the extent that they are involved in the procurement, members of selection committees, technical experts and negotiating teams.

**Primary Contracting Party** means a Vendor who intends to directly enter into or has a contract with Nassau County.

**Retaliatory Action** is defined as any Adverse Job-Related Action taken by, or at the direction or request of, a Vendor or a Vendors' Employees as a result of any individual's (i) good-faith report with respect to a violation or potential violation of this Code or the law; or (ii) cooperation in any investigation of unlawful conduct or misconduct conducted by Nassau County or by federal, state, or local law enforcement officials.

**State Procurement Lobbying Law** means New York State Finance Law Sections 139-j and 139-k, and the rules and regulations promulgated thereunder as may be amended or modified.

**Vendor** means any individual or entity seeking to or doing business



## Vendor Code of Ethics

with Nassau County within the scope of this Code, including, without limitation, contractors, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and employees of the foregoing, as well as any subcontractors, subconsultants and suppliers at all lower tiers.

### **Chapter 2: LIMITATIONS AND REPORTING OF CONTACTS WITH NASSAU COUNTY**

#### **Section 2.01 Designated Point(s) of Contact**

Each procurement solicitation issued by Nassau County will identify the Designated Point(s) of Contact for that solicitation as required by the State Procurement Lobbying Law. Once the Designated Point(s) of Contact is/are established, the Vendor and any person or entity acting on the Vendor's behalf, including without limitation, those providing compensated or uncompensated lobbying, advocacy, consulting or other services should ensure that its contacts with Nassau County are in compliance with the requirements of the State Procurement Lobbying Law.

### **Chapter 3: GIFTS OR CONTINGENT FEES**

#### **Section 3.01 Zero Tolerance**

No Vendor may offer or give any Gift, directly or indirectly, to a Nassau County Employee. Similarly, no Vendor may offer or give any Gift, directly or indirectly, to any Family Member of a Nassau County employee where such Gift is made because of the Vendor's relationship with the Nassau County Employee. Additionally, no Vendor may accept a gift from a Nassau County Employee.

This Zero-Tolerance Policy applies regardless of actual intentions. In other words, even if a Gift does not, or is not intended to, influence an action or decision by a Nassau County Employee, it is prohibited by this Code.

#### **Section 3.02 Personal Relationships**

Notwithstanding the foregoing, if a Vendor has a pre-existing family or personal relationship with the Employee, a Gift that is wholly unconnected with the Employee's duties on behalf of Nassau County is



## Vendor Code of Ethics

not necessarily prohibited.

In determining whether the giving of an item was motivated by personal rather than business concerns, the following factors are considered:

- (a) the history of the relationship between the donor and the recipient, including but not limited to the mutuality of gift giving;
- (b) whether the item was paid for by the donor.

The giving of an item shall not be considered to be motivated by a family or personal relationship if the donor seeks to charge or deduct the value of the item as a business expense or seeks reimbursement from a client.

However, regardless of the family or personal relationship between a Vendor and an employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the employee in the performance of his or her official duties.

### **Section 3.03 Contingent Fees**

The Vendor will not employ or retain any individual or entity for the purpose of soliciting or securing a Nassau County contract upon any agreement or understanding for a commission, percentage, brokerage, or fee that is contingent or dependent upon the outcome of the procurement.

## **Chapter 4: NEGOTIATIONS FOR FUTURE EMPLOYMENT**

### **Section 4.01 Restrictions During the Procurement Process**

Vendors shall not discuss future employment with Participating Nassau County Employees or their Family Members from the date the procurement is advertised or solicited through 30 days following the date that the procurement is awarded, even if a Participating Nassau County Employee contacts the Vendor regarding employment. Questions regarding whether a particular Nassau County employee is a Participating Nassau County Employee for a specific



## Vendor Code of Ethics

procurement should be directed to the Designated Point of Contact for the procurement.

### **Section 4.02 Restrictions Post Award**

Vendors are prohibited from offering or discussing an employment opportunity with a Nassau County Employee or his or her Family Members before whom the Vendor has or expects to have a pending specific matter including, but not limited to, negotiations, performance evaluation, task order selection, approval of a voucher or invoice, or approval of or agreement to a contract amendment, change order, or deviation or waiver until:

- (i) 30 days from the time the matter before the Employee is closed, or
- (ii) 30 days from the time the Employee has no further involvement with the matter because of recusal or reassignment.

## **Chapter 5: CONFLICT OF INTEREST**

### **Section 5.01 Financial Interest**

Neither the Vendor, nor any director, officer, principal, owner, or partner thereof, as the case may be, may have a 10% or greater interest, nor shall the Vendor, nor any director, officer, principal, owner, or partner thereof, acquire a 10% or greater interest, either directly or indirectly, in any company or firm that would conflict in any manner or degree with the performance of the Nassau County contract.

The Vendor will not permit an employee having a 10% or greater interest, either directly or indirectly, in any company or firm that would conflict in any manner or degree with the performance of the Nassau County contract to be employed in the performance of the Nassau County contract.

### **Section 5.02 Personal Business Dealings**

Neither the Vendor, nor any director, officer, principal, owner, or partner thereof, may have a non-County business dealing with a



## Vendor Code of Ethics

Participating Nassau County Employee where it can be reasonably inferred that the purpose of the business dealing, at least in part, is to influence the Participating Nassau County Employee's action on a pending County matter.

### **Section 5.03 Disclosure and Cooperation**

The Vendor shall disclose immediately to the County any real or potential conflict of interest of which it becomes aware. This obligation is ongoing and shall last through the completion of performance of the contract. The Vendor shall provide to Nassau County, at the County's request and upon such forms as may be furnished by Nassau County, a disclosure of organizational, financial, contractual or other affiliations with any organization or entity that has interests that may be substantially affected by the procurement solicitation or award. The Vendor shall fully cooperate in any inquiry or investigation undertaken by Nassau County to determine whether any such affiliations present a conflict of interest, or whether any other provision of this Code has been violated. The Vendor shall fully cooperate with audits, investigations, examinations and reviews by the Nassau County Inspector General conducted pursuant to section 187 of the Nassau County Charter.

### **Section 5.04 Confidential Information**

At no time shall any Vendor who obtains confidential or proprietary Nassau County information in the course of doing or seeking to do business with the County disclose any such information to any person not authorized by Nassau County to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to Nassau County.

If the Vendor receives from any source confidential or proprietary Nassau County information prior to the award of a resulting contract and, where applicable, approval by the County Legislature, without the explicit approval of the Designated Point of Contact, the Vendor shall immediately so notify the Designated Point of Contact.

Nassau County confidential or proprietary information includes, but is not limited to, internal cost estimates and proposals submitted by other Vendors.



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### **Section 5.05 Prohibition Regarding Bidding by Participants in Procurement Development**

No Vendor who participates in the development of a scope of work, solicitation documents, assessment criteria, contractual instruments or technical specifications may participate as a bidder, sub-bidder, proposer or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that Vendor an unfair advantage over other bidders or proposers on that procurement. This prohibition may be waived in writing by the County Chief Procurement Officer upon a showing of good cause.

## **Chapter 6: FORMER NASSAU COUNTY EMPLOYEES**

### **Section 6.01 Appearance Before Former Agency-Two Year Bar**

Except as provided for in Section 2218(8) of the Nassau County Code of Ethics, the Vendor will not permit a former Nassau County Employee to appear or practice before any Nassau County agency, either prior to award or in the performance of a Nassau County contract, for a period of two years after termination of the Nassau County Employee's services with the County.

### **Section 6.02 Appearance Before Former Agency-Life Time Bar**

Except as provided for in Section 2218(8) of the Nassau County Code of Ethics, the Vendor will not permit a former Nassau County Employee to appear, practice, communicate or otherwise render services before the agency that employed the officer or employee or any other agency of Nassau County, either prior to award or in the performance of an agency's contract in relation to any case, proceeding, application or transaction with respect to which such former officer or employee was directly concerned and in which he or she personally participated, or which was under his or her active consideration during the period of his or her employment. This provision is a lifetime bar on projects that the former Nassau County Employee previously worked on while employed by the County.



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### Chapter 7: NON-COLLUSION

#### Section 7.01 Independent Bid Assessment

The Vendor will calculate the price(s) contained in any bid or proposal independently, without collusion, consultation, communication, or agreement with any competing Vendor for the purpose of restricting competition.

#### Section 7.02 Non-Communication of Bid

Unless otherwise required by law, the price(s) which the Vendor quotes in its bid or proposal will not knowingly be disclosed by the Vendor, directly or indirectly, to any competing Vendor prior to the closing date for bids or proposals.

#### Section 7.03 Bid Submission

The Vendor will not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

### Chapter 8: DISTRIBUTION AND CERTIFICATION

#### Section 8.01 Distribution of Vendor Code of Ethics and Vendor's Participating Employee Acknowledgements

As a condition of being considered for the award of any contract above the County's small purchase threshold of \$10,000, the Vendor will be required to distribute copies of the Nassau County Vendor Code of Ethics to all Participating Employees prior to any of those employee's participation in the procurement. The Code may be distributed either in hard copy or electronically as a separate PDF.

Additionally, as a condition of being considered for the award of any contract above the County's small purchase threshold, the Vendor will be required to obtain an acknowledgement from each of its Participating Employees ("Participating Employee Acknowledgements") that they have received, read, understand, and will comply with the Nassau County Vendor Code of Ethics.



## Vendor Code of Ethics

The Vendor's responsibility for distributing copies of the Nassau County Vendor Code of Ethics and obtaining such signed Participating Employee Acknowledgements is ongoing until completion of performance of the contract and shall be retained for the same period as the Vendor is required to retain other contract documents in accordance with their contract with the County.

Receipt and retention of Participating Employee Acknowledgments by the Vendor shall be subject to audit by Nassau County.

### **Section 8.02 Vendor Certifications**

The vendor by signing the final contract thereby certifies and attests to the following:

- (a) The Vendor has been provided with a copy of the Nassau County Vendor Code of Ethics and will comply with all of the provisions of the Code;
- (b) All of its Participating Employees during the course of procurement or contract have been provided with a copy of the Nassau County Vendor Code of Ethics prior to any of those employees' participation in the procurement;
- (c) All Participating Employees have completed the acknowledgement required by Section 8.01 of this Code;
- (d) The Vendor will retain all of the signed Participating Employee Acknowledgements for the same period as the Vendor is required to retain other contract documents in accordance with their contract with the County;
- (e) The Vendor will continue to distribute the Nassau County Vendor Code of Ethics, obtain signed Participating Employee Acknowledgements as new Participating Employees are added or changed during the contract period, and retain all of the signed acknowledgements for the same period as the Vendor is required to retain other contract documents in accordance with their contract with the County.



## Vendor Code of Ethics

### Section 8.03 Subcontractor Certifications

As a condition of being considered for the award of any contract above the County's small purchase threshold, the Vendor will obtain certifications executed by authorized officials from all of its lower tier subcontractors, subconsultants and suppliers (as well as from any other subcontractors, subconsultants and suppliers from whom that Vendor is soliciting or has received proposals for work on a Nassau County contract) whose employees have communicated or may communicate with Nassau County Employees. This obligation is ongoing and shall last through the completion of performance of the contract. Receipt and retention of lower tier certifications by the Vendor shall be subject to audit by Nassau County.



## Vendor Code of Ethics

### Chapter 9: PENALTIES

#### Section 9.01 Responsibility Determination

For violation of any provision of the Nassau County Vendor Code of Ethics, Nassau County may avail itself of every remedy in law or equity, or as agreed to by parties in any contract, including but not limited to declaring the Vendor non-responsible or in material breach of the contract.

#### Section 9.02 Civil/Criminal Penalties

Additionally, violation of the Nassau County Vendor Code of Ethics or a provision thereof may subject the Vendor to criminal or civil penalties under State or Federal law.

### Chapter 10: REPORTING OBLIGATION

#### Section 10.01 Reporting Gift Requests

Notwithstanding the provisions of Chapter 4 above, the Vendor is obligated to immediately report to Nassau County's Inspector General and the County Chief Procurement Officer, any and all requests made to the Vendor by any Nassau County Employee for a Gift.

#### Section 10.02 Reporting Material Changes

The Vendor is under a continuing obligation to report any change in circumstances that materially affects any prior report to Nassau County to Department of Chief Contracting Officer, including but not limited to disclosure of conflicts of interest and representations made in the Contractor Responsibility Form.

#### Section 10.03 Reporting Violations and Overpayments

The Vendor is obligated to timely report in writing to Nassau County's Inspector General, in connection with the award, performance or closeout of the Nassau County contract or subcontract, any credible evidence of significant overpayments on the contract or that a principal, employee, agent or subcontractor has committed a



## Vendor Code of Ethics

violation of law involving fraud, conflict of interest, bribery or gratuities.

### **Chapter 11: PROHIBITION ON RETALIATION**

#### **Section 11.01 Prohibition**

To facilitate the reporting obligations under Chapter 10, this code strictly forbids all Vendors and Vendors' Employees from taking any Retaliatory Action against individuals who make such reports.



# Vendor Code of Ethics

## CERTIFICATION REGARDING DISTRIBUTION OF NASSAU COUNTY VENDOR CODE OF ETHICS

Bid/Proposal No.: \_\_\_\_\_

Project Description: \_\_\_\_\_

The prospective lower tier participant \_\_\_\_\_ (subcontractor, subconsultant, or supplier name) hereby certifies, by submission of this bid or proposal to \_\_\_\_\_ [prime contractor] in connection with the Nassau County bid or proposal number referenced above, to the best of its knowledge and belief, that all officers and personnel who have communicated or may communicate with Nassau County employees during the course of the procurement and through the completion of performance of the contract have been provided with a copy of the Nassau County Vendor Code of Ethics prior to each of these employee's participating in the procurement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official



# Vendor Code of Ethics

## PARTICIPATING EMPLOYEE ACKNOWLEDGEMENT REGARDING NASSAU COUNTY VENDOR CODE OF ETHICS

Company: \_\_\_\_\_

Bid/Proposal No.: \_\_\_\_\_

I, \_\_\_\_\_, acknowledge that I have received and read the Nassau County Vendor Code of Ethics on \_\_\_\_\_ and that I understand it and will comply with this Code in my participation in procurements between \_\_\_\_\_ (Vendor name) and Nassau County.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_ Signature of Employee

\_\_\_\_\_ Name and Title of Employee

## **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, corruption, conflicts-of-interest, 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 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 (4448)**
- **Email: [InspectorGeneral@nassaucountyny.gov](mailto: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 it happen? Give dates, times; location; facility; work unit.
- 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?
- 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.

**Waste** is negligent or extravagant expenditure of County funds or incurring of expenses, or misuse of County resources or property.

**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 it provided, to the County.

**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: An example would be 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.