

Nevada County Request for Proposal and Procurement Practices

2018-2019 Nevada County Grand Jury

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Summary

The 2018-2019 Nevada County Grand Jury (Jury) responded to a citizen's complaint "regarding irregularities in the recent Request for Proposal (RFP) and the selection process for the organization selected to operate the County's animal shelter." The Jury conducted an investigation into Nevada County's (County) RFP process used to select the vendor cited in the complaint. The Jury reviewed pertinent documents and conducted interviews with personnel within County government and the Sheriff's Office.

During its investigation of the RFP process, the Jury found a number of problems to support its overall conclusion that the County's procurement practices are not consistent with generally recognized best procurement practices. After conducting several interviews, the Jury determined there was a lack of communication and coordination among the various departments involved with an animal control RFP. The Jury learned that the County does not have comprehensive established policies and procedures regulating its procurement process. Instead the County relies on a *Purchasing Guide*, dated June 13, 2017; an undated amendment to that *Purchasing Guide*; and the County Administrative Code (Admin Code). The Jury's investigation shows that these publications combined with the Admin Code do not adhere to generally available best procurement practices.

The Jury concluded that an adherence to generally recognized best procurement practices by the purchasing department would ensure that County procurement is performed honestly, fairly, effectively, and professionally. In turn, this ensures that best value is obtained and that the County recognizes that the public trust is embodied in the authority to expend County funds.

Efforts are underway within Information & General Services (IGS) to update the Admin Code to include policies and procedures that adhere to best procurement practices. The Jury commends this effort. However, the success of this program depends on the support of the Nevada County County Executive Office, County Counsel, and the Nevada County Board of Supervisors. Without this support IGS will not be able to implement any meaningful changes in a timely manner.

Glossary

Admin Code	Nevada County Administrative Code
BoS	Nevada County Board of Supervisors
CEO	Nevada County Executive Office
County	County of Nevada
IGS	Nevada County Information and General Services
Purchasing	Nevada County Purchasing Department
<i>Purchasing Guide</i>	<i>Nevada County Purchasing Guide</i>
RFP	Request for Proposal
SF	Sammie's Friends
NCSO	Nevada County Sheriff's Office

Background

Animal Control Request for Proposal

As a government agency, the County utilizes a competitive process to select contracted service providers for a variety of community services. The County usually reassesses contracts every three to five years to allow qualified organizations to compete to deliver county services and to ensure the County and the taxpayers are getting the best value and service. This practice also allows the current vendor of a contract the opportunity to fine tune their skills and respond to a County solicitation for services.

The County has contracted for the administration and operation of its animal shelter and related services since July of 2010. The County entered into a three-year contract for its animal shelter services on July 1, 2010 to run to June 30, 2013. This contract was with Sammie's Friends (SF).

The County then extended the contract for five years with the same contractor. The contract's term started July 1, 2013 and ended on June 30, 2018. In December of 2017, an RFP for the County's animal shelter was released to the public by Purchasing on behalf of the Nevada County Sheriff's Office (NCSO). In Nevada County, the NCSO oversees animal control and the animal shelter. Since 2010 SF, a local non-profit organization, has held the Animal Shelter contract.

The RFP for animal shelter services resulted in written proposals from two vendors, SF and Placer County. The RFP requested that proposals identify which service area(s) the proposal addresses. The three core service areas were: animal intake, animal husbandry, and animal adoption programs. Vendors were encouraged to apply to one, two, or all core service areas and were requested to provide a three-year budget proposal and a one-year annual budget that broke out costs by each category as presented in the RFP description of services. SF proposed to provide all three core service areas and submitted an "all or none" cost proposal but did not initially provide separate costs for each service area. Placer County proposed to provide animal husbandry and animal adoption services and provided separate costs for each service area.

Both proposals were scored by an evaluation panel selected by the NCSO. Members of the panel included two NCSO employees and two regional subject-matter experts. Panelists independently scored both proposals. The Nevada County Purchasing Department (Purchasing) then calculated the final scores. The cumulative results were identical for both SF and Placer County. Because the results were equal, and the RFP was silent on how to settle a tie, Purchasing suggested the full panel interview both vendors. The vendors were scored a second time and Purchasing notified them of the results. The Placer County proposal was scored higher.

On April 6, 2018 the Panel recommended Placer County to the NCSO as the most qualified proposal for the two services. Purchasing then sent an award letter to Placer County and a letter of regret to SF. In response, SF contacted the County and expressed their concerns with the evaluation panel's decision. SF then embarked on a social media campaign, which resulted in public support for SF.

The Board of Supervisors (BoS) received significant community feedback in support of SF. On April 24, 2018 County authorities cancelled the RFP process. The County and the NCSO then worked with SF to extend the existing contract to operate the animal shelter.

After negotiated meetings between County officials, the NCSO, and SF an agreement was reached. On April 26, 2018 the Nevada County Board of Supervisors approved Resolution No. 18-331 which authorized another extension to the contract. In essence this was a non-competitive single-source contract. SF agreed to continue operation of the animal shelter for one year with an automatic renewal contingent on hiring a new shelter director and financial officer.

Nevada County Procurement Practices

The mission of Purchasing is to procure goods and services for the County in a manner that assures the best value is obtained and that recognizes the public trust embodied in the authority to expend County funds.

The Purchasing Agent serves pursuant to the California Government Code and the County Admin Code to procure goods and services for all County departments. California Government Code section 25500 provides that the BoS may employ a purchasing agent. The County has established the office of the Purchasing Agent pursuant to Admin. Code section A-IV who “. . . shall establish methods and procedures necessary for the proper functioning of the Purchasing Unit in an efficient and economical manner. (Ord. 1580)”

According to the 2016-2017 General Fund Budget, Purchasing issued 1,290 purchase orders and contracts totaling \$11 million and 41 invitations for bids, requests for qualifications, and requests for proposals. BoS approval is required for dollars expended for goods and services over \$20,000. Many purchasing transactions fall under \$5,000 and do not require an RFP. This report focuses on larger transactions that require an RFP and BoS approval.

County procurement practices are complex. They involve complexities that exceed mere buying goods and services and require knowledge and skills in critical areas such as:

- finance and accounting;
- contract law and negotiation;
- contract planning, management and oversight;
- marketing; and
- a working knowledge of all County functions and their interrelatedness.

The County's procurement practices flow through three informal mechanisms – graduated purchasing authority levels as defined by the Admin Code, competitive bidding requirements, and budget controls. These practices are meant to ensure fair market prices and best value by requiring purchasers to obtain multiple vendor bids and to select the lowest responsible bidder.

Informal competitive bidding requirements also follow a graduated approval system. Smaller purchases of commodity items where competition already exists between vendors allows for purchases on the open market without multiple bids. Larger purchases, where generally less competition exists between vendors, call for competitive bidding. These requirements range from formal bids to issuing RFPs.

Approach

The Jury began its investigation with an interview with the complainant then developed a plan of action that included personal interviews, review of County published material, and Internet research. The Jury interviewed County staff and a representative from SF. The Jury also reviewed documents from the following County departments and offices: IGS, NCSO, CEO, and the Auditor-Controller. The Jury consulted the following sources: the Admin Code, the *Purchasing Guide*, the Animal Shelter RFP, and the informal changes made to the *Purchasing Guide* since its first published date. The Jury also examined electronic correspondence that circulated among personnel involved in the Animal Shelter RFP preparation process, the selection of the Animal Shelter Evaluation Panel, the scoring of the vendors' responses, and the announcement of the results. Finally, the Jury interviewed for the second time selected personnel to discuss applicable document revisions and policy changes that could be helpful for future issuance of RFPs.

Discussion

The Jury's initial investigation focused on a citizen's complaint involving an RFP issued December 8, 2017 for the County's animal shelter service. During the investigation into this RFP process and its related contracts the Jury found a number of deficiencies in the County's procurement practices. The Jury concluded that these practices are not consistent with generally recognized best procurement practices.

The deficiencies noted below are currently being addressed by IGS:

- Absence of a provision allowing a vendor to initiate a protest after a Notice of Intent to Award has been issued.
- Absence of a provision to allow an evaluation panel member to be recused at their request.
- Absence of a provision ensuring evaluation panel members are not in a supervisor/subordinate relationship.
- Absence of a provision ensuring that an evaluation panel is composed of an odd number of members.

The deficiencies noted below have not been addressed by IGS:

- Absence of a provision to resolve a scoring tie.
- Absence of a provision addressing a situation where an evaluation panel member's scores are substantially different from the other members' scores.
- Absence of a provision allowing or prohibiting a respondent to modify its proposal after submission.

The Jury found in its investigation of the County's Animal Shelter RFP process that two evaluators had asked to be recused from the review panel that had been set up by the NCSO. Their requests were denied. The denials appear to violate basic tenets of public procurement. County officials were unable to provide the Jury with the original evaluators' score sheets and written comments. They could only provide a summary of the scoring process. The Jury found mathematical anomalies in the summary. The evaluator's scoring on one bidder fell outside the scoring pattern of the other reviewers. These anomalies resulted in a tie between two bidders, yet no investigation was conducted to determine the reason for the tie. The lack of an investigation raised the claim of bias which was a concern of the complainant.

The Jury also found that Placer County responded to the RFP with a one-year annual budget that broke out costs by category as requested in the description of services. SF responded to the RFP with one cost for all three services in a manner that was not responsive to the RFP. County officials offered SF an opportunity to modify its proposal after submission so it could separately address the cost for each core service with a one-year budget. SF declined and reiterated that their bid was an "all or none" bid. Placer County submitted a proposal using the previous year's cost estimates, and then re-submitted the proposal to include the current costs. The Jury could find no provision in the County's RFP process that would allow a respondent to modify its proposal after the fact.

During interviews with County officials the Jury learned that the anonymity of panel evaluators was not maintained and that two evaluators reported receiving public threats as a result. Information released allowed the determination of evaluators' names, affiliations, relative assessments, and other identifying information.

Best procurement practices, models, and strategies are readily available for consideration through professional organizations, academia, and other sources including The National Institute of Governmental Purchasing. Given the number of irregularities in the procurement process

identified, the Jury did not find it useful to spend more time cataloging additional problems through the review of multiple RFPs issued by the County.

During its investigation the Jury learned that the County does not have comprehensive policies and procedures regulating procurement. Instead the County relies on a *Nevada County Purchasing Guide (Purchasing Guide)*, dated June 13, 2017. The Jury was informed by many of the County officials interviewed that the *Purchasing Guide* does not represent regulatory policy or procedure, it is only a training manual. The Jury found this inconsistent with generally recognized current best procurement practices for government agencies. Comprehensive policies and procedures should reflect the best efforts of County employees to ensure procurements are performed honestly, fairly, effectively, and professionally in a manner that ensures the best value is obtained and recognizes the public trust embodied in the authority to expend County funds.

Evidence could not be found that the *Purchasing Guide* and an undated one-page amendment had been reviewed, approved, or adopted as policy or procedure by the Purchasing Agent.

No evidence could be found that County departments are responsible for following the *Purchasing Guide* or that a formal procedure for approving changes to the *Purchasing Guide* exists. The Jury also found differences between the Admin Code and the *Purchasing Guide*, including the following:

1. The *Purchasing Guide*, Section 8.4f, states that evaluation of proposals is done by a team selected by the requisitioning department. Admin Code, Sec. A-IV 1.9, *Procedures for the Selection of Consultants*, states:
For contracts involving work at an estimated cost of more than \$50,000.00, the department head and the County Administrative Officer shall jointly determine the composition of the selection committee as they determine is appropriate (which may include a member of the Board of Supervisors, the County Administrative Officer, and/or staff from the County Administrative Officer's office, an attorney from the County Counsel's office, one or more members from a County committee, and such technical staff as deemed appropriate).
2. The *Purchasing Guide*, Section 7.1(b) states that “. . . contracting for the services of a consultant (as defined in Government Code Section 4525) for a sum estimated at exceeding \$20,000 . . .” requires competitive procurement. Government Code Section 4525 does not define the term consultant.

The County has entrusted procurement to “generalist” buyers rather than to certified procurement professionals. These buyers are operating under guidelines without the benefit of established comprehensive policies and procedures that adhere to generally recognized best procurement practices. One County official testified before the Jury that the greatest risk to County purchasing is the lack of certified buyers following best procurement practices. The Jury was informed by County officials that the BoS was “blindsided” when the Animal Shelter RFP was issued and a Notice of Intent to Award a contract issued to Placer County. The BoS was caught unprepared in both cases because BoS approval was not sought in advance of the RFP or the

Notice of Intent to Award. The failure to obtain BoS approval in advance of issuing the RFP and subsequently issuing a Notice of Intent to Award the contract to Placer County placed the BoS at a disadvantage in performing its oversight function for a multi-year solicitation that ultimately resulted in a two-year contract extension valued at \$1,478,000.

According to Sec. A-IV 1.9C of the County Administrative Code,

. . . the proposal to contract with a consultant for a sum estimated at exceeding \$20,000 shall be submitted to the Board of Supervisors for its approval in advance of soliciting any work. The department shall provide to the Board a general description of the work to be accomplished, the need for the work, the timing of such work, and an estimate of the cost thereof.

According to County officials the lack of explicit policies and procedures defining when BoS approval is to be sought in advance of an RFP soliciting services from consultants, be they a professional service or a personal service, caused the miscommunication. The Jury concluded that the Purchasing Department's lack of standardized purchasing procedures, if not corrected, could result in a repetition of this problem for the BoS.

The Jury has also found that there is insufficient staff available to audit internal contract files in order to ensure contractors are performing according to contract specifications. For example, no contracts have been audited by the Office of the Auditor-Controller since 2008, when this office's staff was reduced by roughly 25%. The Auditor-Controller's Office processes and pays invoices. It appears the only verifications expected for payment are departmental approval and availability of funds. The Jury found no independent auditing was being performed by the Auditor-Controller's staff to assure that goods are received or that services are performed in compliance with the contract. The Admin Code, a BoS Resolution (No. 98479), and the *Purchasing Guide* (Section 5.4) require the Auditor-Controller's office to periodically audit contract files.

Other issues were encountered that made this investigation difficult. For instance, the Jury could obtain neither an explanation for cancellation of the Animal Shelter RFP nor the reason a sole source contract was extended to SF after a review panel recommended the award be given to Placer County. In the *Purchasing Guide*, Section 9.1g, the department is required to provide an explanation of that decision, which requires ratification by the Purchasing Agent.

The BoS has the sole authority to terminate an RFP and a proposed procurement action. However, the public has a right to know on what basis that decision is made, particularly when a review panel's recommendation on an RFP is other than the procurement action approved by the BoS.

In the case of the Animal Shelter RFP, the Jury found email evidence that the recipient of the sole-source award extension had been the subject of multiple administrative complaints from the department contract manager. The Office of the Auditor-Controller said it was aware of some problems but did not receive formal notification from the department responsible for contract administration. Such a notice would have precipitated an investigation.

County officials who managed the 2013 contract with SF could not provide the Jury with documentation of the required endorsement naming the County as an additional insured. The contractor was allowed to continue working on the contract. Once the County was threatened with a lawsuit this omission became known to the department. According to the *Purchasing Guide*, Section 6.9, the department that administers the contract is responsible for keeping track of insurance expiration dates and ensuring documentation of insurance renewals is obtained in a timely manner.

It is reasonable to conclude that no endorsement naming the County as an additional insured on the SF insurance policy existed, or that if the endorsement had existed, the department responsible for managing the contract was not properly administering the contract. Best procurement practices require these records be kept to provide the basis upon which the County can be assured that the contractor providing services is in compliance with the contract. These discrepancies indicate a contract that was not being fulfilled and it also suggests a contract administration process that lacks integrity.

Findings

The following are findings based on interviews and a review of documentation provided to the Jury:

- F1** The County does not have approved policies or procedures for the efficient operation of the Purchasing Department.
- F2** The County's *Purchasing Guide* is a training manual, not formal policy or procedure. The *Purchasing Guide* contains discrepancies between its contents, the Admin Code, and California Government Code; is not consistent with generally recognized best procurement practices, is ambiguous as to RFP procedures, and is not always followed by County Offices and Departments.
- F3** County employees receive training on the *Purchasing Guide*, but many who conduct purchasing operations and/or manage contracts are not fully trained on and do not always follow best procurement and contract management practices.
- F4** RFP practices in the *Purchasing Guide* have a number of correctable issues that could be addressed with detailed procedures if properly followed by County Offices and Departments.
- F5** The Office of the Auditor-Controller lacks sufficient staff to conduct contract reviews pursuant to BoS Resolution No. 98479, dated 27 October 1988, which requires internal contract audits be conducted every third year of the contract. No internal contract audits have been conducted since 2008 when the Auditor-Controller's office staff was reduced by 25%.

Recommendations

The Nevada County Grand Jury recommends:

- R1** The CEO, in cooperation with the County's Purchasing Agent, should continue researching procurement best practices and establish appropriate written procurement policies, practices, and procedures that would be followed in executing County procurement processes.
- R2** The County's Human Resources department and Purchasing Agent should conduct an assessment of the training needs of current procurement staff and implement a plan for the training of new procurement employees on generally recognized best procurement practices.
- R3** The Purchasing Agent should submit a report to the BoS on completed revisions to the *Purchasing Guide*, as well as policies and procedures.
- R4** The Purchasing Agent should, within 60 days of establishing formal written policies, practices, and procedures, and completing revisions to the *Purchasing Guide*, lead each County agency through training on the County's new policies, practices, and procedures. Policies, procedures.
- R5** The *Purchasing Guide* should be reviewed and updated annually.
- R6** The *Purchasing Guide* should be updated to include the following:
 - a. required BoS approvals prior to issuance of an RFP;
 - b. establishment and handling of protest periods;
 - c. evaluation panel reviewer selection and recusals;
 - d. procedure in the event of evaluation panel reviewer statistical anomalies;
 - e. bidder qualification reviews where contract administrators have escalated concerns regarding a vendor's past contract performance;
 - f. maintenance of documented administrative files during a blackout period of County employee contacts involved with the RFP process and RFP respondents other than the County person named in the RFP document; and
 - g. maintenance of complete administrative files documenting and justifying final decisions when that decision goes against the evaluation panel's recommendation.
- R7** The CEO's office should complete a review of the Office of the Auditor-Controller and the staffing needs required to comply with BoS Resolution No. 98479 as soon as possible.
- R8** The CEO's office should work with the Office of the Auditor-Controller to develop a checklist for contract administrators to document at least annually vendor performance and compliance with liability insurance requirements.

- R9** All County contract administrators should, using the checklist referred to in R8, conduct performance evaluations and document them in an administrative file. Problems or concerns with a vendor's performance should be formally investigated and addressed.

Request for Responses

Pursuant to Penal Code section 933.05, the Nevada County Grand Jury requests responses from the following:

The following responses are due by 28 June 2019.

- Nevada County Board of Supervisors for Findings F2 and F5, and Recommendations R3 and R7.
- Nevada County Auditor-Controller for Findings F4 and F5, and Recommendations R7 and R8.

The following responses are due by 28 July 2019.

- Nevada County County Executive Officer for Findings F1 and F4, and Recommendations R1, R8, and R9.
- Nevada County Purchasing Agent for Findings F1, F2, F3, and F4; and Recommendations R1, R2, R3, R4, R5, R6, and R9.
- Nevada County Human Resources Director for Finding F3 and Recommendation R2.