

# Certified Inspector General Inspector / Evaluator Course



INSPECTOR GENERAL INSTITUTE  
TRAINING AND CERTIFICATION FOR INSPECTION  
AND OVERSIGHT PROFESSIONALS

## Procurement and Contracts for Inspectors / Evaluators

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ASSOCIATION  
OF  
INSPECTORS  
GENERAL





# Course Objectives

- 1 Identify the 3 main parts of the procurement process.
- 2 Describe how Inspectors/Evaluators provide oversight into the procurement process.
- 3 Understand the risks and opportunities for fraud, waste, and abuse in the procurement process.



# **Why is Procurement and Contracts Oversight Unique?**



# Unique Oversight

**We're Live!**



The procurement activities monitored are usually live or in-process.

This differs from other inspections and evaluations that are typically conducted after-the-fact.



# Unique Oversight

## We may be able to prevent an issue!



The Inspector/Evaluator may be able to provide instructional information before the entity compounds an improper action or error.

For example, in Florida a common municipal bidding error is not complying with the Florida Statutes when obtaining outside audit services.

The Inspector/Evaluator can remind the entity of the statutory references about audits, or recommend an informative publication (IG Tips & Trends) prior to an award decision so that timely corrective action can be taken.



# Unique Oversight

## It's not a Deep Dive!



**Inspections/Evaluations**

Inspectors and Evaluators need to cover a lot of ground in reviewing the procurement process.

A procurement review must be flexible, responsive, and balanced in both depth and scope.

## Audits & Investigations





# Unique Oversight

## Think on your feet!

A procurement review means **constantly analyzing** the situation and determining the next course of action.

When reviewing documents, observing meetings, or scrutinizing a process, the Inspector/Evaluator needs to analyze the facts and determine if further action is warranted.

If further action is warranted, then the Inspector/Evaluator needs to determine how best to proceed.

*This is a very fluid and dynamic environment!*





# Unique Oversight

## Presence!

*The act of observing tends to influence the phenomenon being observed.*

The Inspector/Evaluator's **continuous presence** and oversight in the procurement process:

- Is typically executed more dutifully when the participants know it is being observed.
- Helps develop a rapport with public employees, and vendors.
- Creates pathways of trust and understanding.
- Provides insight into emerging trends and issues.
- Is a form of outreach which is noticeable to the public!





# Procurement Fraud

The role of the Inspector/Evaluator is to:

Find....

- Waste of public funds & resources
- Administrative errors & code violations
- Kickbacks/Bribes
- Conflicts of interest
- Fraudulent companies/orders/invoices
- Bid collusion/Bid rigging
- Delivery fraud
- Labor/materials mischarges
- False statements/claims
- and more...

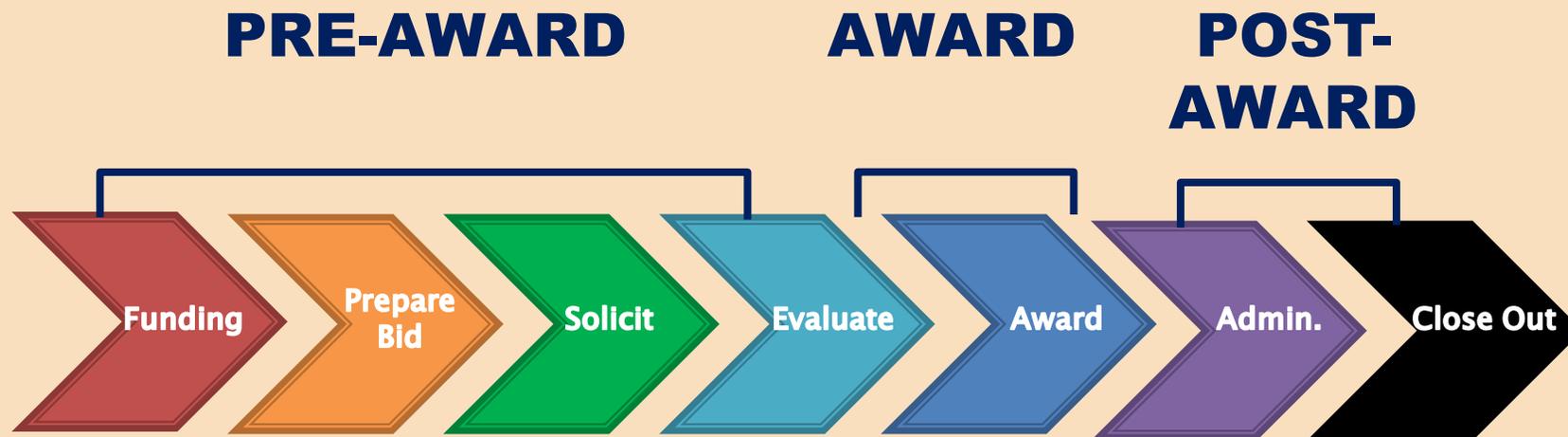
In all of this....





# Procurement Process

The 3 main parts of the procurement process are:





# Pre-Award Process

**Pre-Award:** Activities that begin the procurement process, up to the final selection of a vendor for award of the bid/contract.

- Budgeting/funding
- Development of the bid/statement of work
- Public Announcements
- Solicitation, pre-bid meetings, Q&A's, & addendums
- Receipt of bids/proposals
- Evaluation of bids/offers
- Final vendor selection for award



# Pre-Award: Inspector/Evaluator

## Is the funding source appropriate for the transaction?

**Issue:** Can surtax infrastructure funds be used for the following municipal project?

- Purchase of a 100 ft aluminum Christmas tree, street light displays, village, storage, setup, and dismantling. Total Cost: \$800,000

**Resolution:** The surtax ballot initiative and Florida Statutes could be interpreted that the tree is a capital, infrastructure type item and the use of funds appropriate. However, the municipality decided to use other tax sources for the tree, village, and lighting due to the “optics” of the situation.

But, the Surtax Oversight Committee determined that surtax funds could still be used for dismantling the tree, improvements to the storage facility, and renovations to the concrete pads, poles and power sources for the lighting and village displays.





# Pre-Award: Inspector/Evaluator

## Is the bid accurate, fair, and reasonable?

- Is the statement of work complete and not unnecessarily restrictive?
- Are all the required terms and conditions stated?
- Are vendor qualifications necessary, and not unduly limiting to competition?
- Has the bid been properly approved, such as Florida statutory requirements for an appointed Audit Committee to approve the audit RFP specifications?

## Palm Beach County OIG Report, CA-2018-0034, Lifeguard Towers

The essence of the complaint involved two issues: 1.) That the procurement process of the lifeguard towers was improper, and 2.) the cost of the lifeguard towers was unreasonably high.

We found the City complied with applicable procurement policies, and while the towers' price is higher than several other municipal towers, the City provided reasonable justification for the expenditures.



# Pre-Award: Inspector/Evaluator

## Lifeguard Towers (cont'd)

**Vendor Qualifications:** Generally, an agency may not place limitations in a bid that hinder competition or which will afford an opportunity for favoritism, whether any favoritism is actually intended or practiced, or not. Based upon our review, we did not find that the determination of the minimum vendor qualifications was too restrictive or had the effect of unduly limiting competition.



**Bid Specifications:** Although the design specifications were very precise and required specialty materials, we did not find that the specifications were too narrow to allow for adequate competition or limit the opportunity of prospective bidders to submit a bid.

We found no information suggesting that the skills and materials needed to construct the requested lifeguard towers were inaccessible to vendors willing to perform the work.



# Pre-Award: Inspector/Evaluator

## Have all the public notices been properly posted?

- Was the bid announcement posted where required?
  - Electronically
  - Physically posted
  - Printed in newspaper or similar media
- Were all the pre-bid/proposal meetings and conferences properly announced?
  - Date, Time, and Location
- Was sufficient advanced notice of the meeting given? (Is the time specified by rule or code?)
- Is the content of the public notice complete and proper?
  - Description, term, award, qualifications, and submission date



# Pre-Award: Inspector/Evaluator

## Solicitation, pre-bid meetings, questions, & addendums

- Review the bid for required terms, conditions, certifications, and clauses.
- Review the award and evaluation criteria. Is the award criteria reasonable?
- Attend the pre-bid meeting. Are there a lot of questions? If so, is it about the same bid issues? Is it a mandatory meeting? Who is in attendance?
- **Watch-Listen-Learn!** The character and conduct of the solicitation process can indicate a problem with the bid document, specifications, vendors, or the public entity.



# Pre-Award: Inspector/Evaluator

## Receipt of bids/proposals

- Are the bids/proposals sealed, time stamped, recorded, and secured from tampering?
- Are the bids/proposals publicly opened?
- Is the pertinent information recorded on the bid tab? Material items specified in bid should be recorded, such as:
  - Vendor's name
  - Bid amount (ITB)
  - Addendum acknowledgements
  - Sample submittals
  - Bonds



# Pre-Award: Inspector/Evaluator

## Evaluation of bids/offers, and final vendor selection for award

Is there evidence of:

- **Bid collusion** – Competitors conspire to rotate bid winnings, prices are inflated, and the “losers” are used as subcontractors by the winners.
- **Bid rigging** – Vendors and/or public officials predetermine the bid award winner through collusion, restrictive specifications, restrictive vendor qualifications, and manipulating evaluation scores.
- **Unbalanced bids** – Vendors manipulate line item prices to skew the evaluation results, or to make the contract more profitable by inflating frequently purchased line items.



# Pre-Award: Inspector/Evaluator

It's important to observe evaluation committee meetings. Record the facts, but understand the dynamics between the members and the vendors!

- Are any of the discussion comments:
  - Inappropriate
  - An attempt to influence through a superior-subordinate relationship
  - A committee member eager to persuade other members
- Is a voting committee member not prepared, inattentive, or absent?
- Was the scoring, and final vendor selection equitable to the committee discussions?
- Were the proper evaluation procedures followed?
  - Beware of CCNA shortcuts by the Selection Committee...
    - Typical Arguments: Streamlined, hybrid, cost savings, & no need for discussions.



# Pre-Award: Inspector/Evaluator

## **Palm Beach County OIG Report Case No. 2014-0009 WB, Engineering Short List Committee**

A whistleblower complaint alleged that an Engineering Supervisor (ES), while serving as the Chair of the Engineering Short List Committee:

- Improperly voted for firms with whom they maintained close personal relationships with the principal consultants and/or owners.
- Improperly influenced the votes of subordinate Committee members.
- The entity's policy and Committee practices are not in compliance with the Consultants Competitive Negotiation Act (CCNA).



# Pre-Award: Inspector/Evaluator

## Case No. 2014-0009 WB, Engineering Short List Committee

The results of the interviews were:

- ES acknowledged the close personal relationships with the identified owners.
- Had regular weekly lunches with 3 firms' owners for at least 20 years.
- ES' entire extended family spent Christmas Eve at one owner's home for over 10 years, while the owner and his wife spent Christmas morning opening gifts at ES' home.
- Took a joint family vacation with one owner every year up until 10 years ago. The company owner always paid for the lodging.



# Pre-Award: Inspector/Evaluator

## Case No. 2014-0009 WB, Engineering Short List Committee

### Interviews:

- ES denied showing any favoritism.
- None of the Committee members interviewed stated that ES directly influenced their choices either before, during, or after Committee meetings.
- But, half of all the Committee members interviewed felt that ES indirectly influenced or attempted to influence either their future choices or other Committee members' future choices.



# Pre-Award: Inspector/Evaluator

## Case No. 2014-0009 WB, Engineering Short List Committee

### Conclusion:

- Two of the three allegations were deemed to be inconclusive.
- One allegation was not supported.
- The OIG uncovered significant issues for which corrective actions must be taken.

### Epilogue:

*To better understand this report, some discussion of Inspector General standards and the gray area between legality and what is right, is warranted.*

OIG investigations are usually initiated as a result of allegations that someone acted in violation of an established standard, such as a law, ordinance, or policy.



# Pre-Award: Inspector/Evaluator

## Case No. 2014-0009 WB, Engineering Short List Committee

### Epilogue:

The IG gathers and evaluates facts/evidence and then examines the applicable standards to determine whether or not the alleged actions violated those standards. Both a preponderance (or majority) of evidence, and a violation of a specific law, ordinance, or policy is required to support/substantiate the allegation of wrong doing.

In this case, two of the three allegations were deemed to be inconclusive due to a *lack of established standards*.

However, just because certain actions may not be illegal does not make those actions right. When situations like this come to light, corrective measures must be taken. Such actions may include the establishment of new policies or procedures and appropriate personnel actions.



# Pre-Award: Inspector/Evaluator

## Case No. 2014-0009 WB, Engineering Short List Committee

### Highlights:

- Over 3 years, ES served as the Committee Chair on 25 bids. On 18 bids, proposals were received from ES' "friends". 17 times ES voted to advance the "friends" company.
- Committee members interview comments about ES:
  - A vindictive person, power hungry, intimidating, holds a grudge, throws fits, and continually reminds subordinates that they are employed "at-will."
  - Negative comments against "friends" means the employee is personally "against" ES.
  - Often has terse words with members after meetings about their choices.
  - Asked the IG for a warning before report was released to "prepare for blowback."



# Pre-Award: Inspector/Evaluator



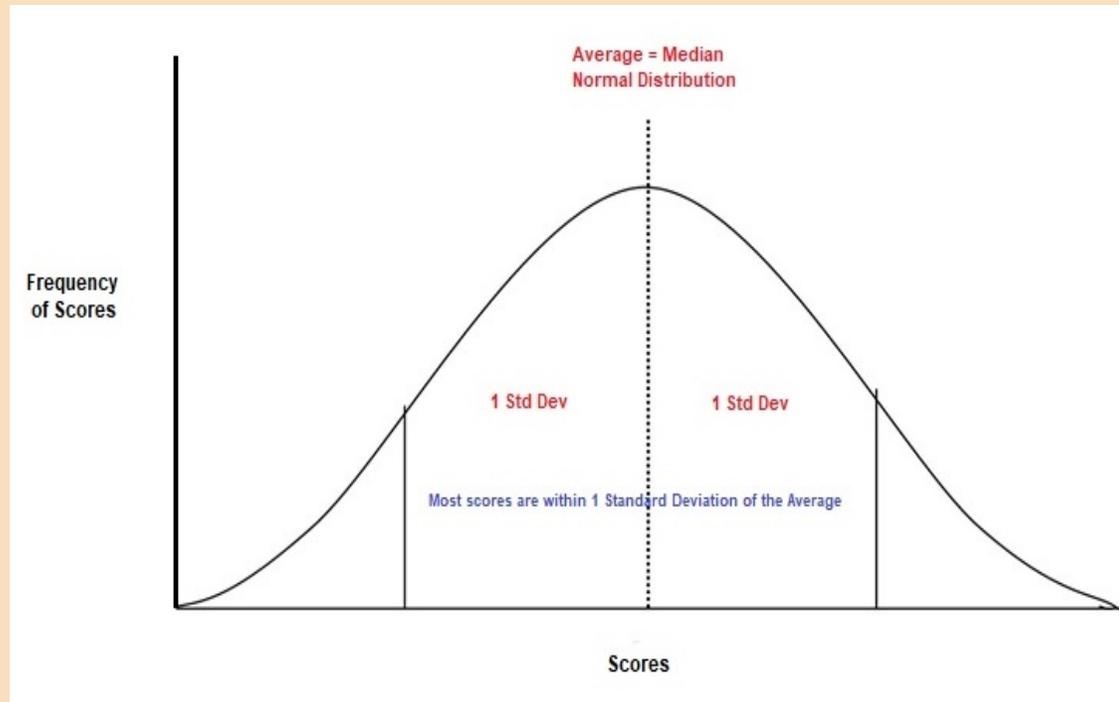
## ES' Classic Interview Quote:

*“everybody does their [own] vote...  
and I am entitled to vote however  
I see fit...and if it's for my friends,  
hallelujah.”*



# Pre-Award: Inspector/Evaluator

Evaluation of bids/offers, and final vendor selection for award



Data analytics is useful in verifying the integrity of Evaluation Committee scores



# Pre-Award: Inspector/Evaluator

## Evaluation of bids/offers, and final vendor selection for award

- Data analytics can show Committee Members that score high, low, fair, tough, inconsistent, or unfair when compared to the rest of the Committee.
- Ordinal scores (aka ranking), can be used to verify the integrity of the numerical scoring.
- Identifies any other scoring patterns, anomalies, or inconsistencies. Locates scoring anomalies so severe that they alter the rank or scores.
- May indicate collusion between a member and the vendor; a member trying to fix the results to favor a particular vendor. Vendors often look for scores that are arbitrary and capricious in order to protest the results of Committees.
- *Data is meaningless unless its interpreted in the proper context using common sense!*
- *Analytics does not equal proof.*



# Award Process

**Award:** The process used after selecting a vendor for award through the execution of a formal agreement.

- Vendor Oversight
- Public Announcement
- Protests
- Negotiation of terms and conditions
- Surety, Bonding, Insurance
- Approval by responsible authority



# Award: Inspector/Evaluator

## Vendor Oversight

- Oversight is a review that is more in-depth than a simple determination of vendor responsibility.
- Inspectors and evaluators should consider:
  - Who owns the company?
  - Are there any ethical conflicts by individuals?
  - Are there any ethical conflicts with the company?
  - Is there history between the company, the entity, and any of their employees?
  - Is the vendor the incumbent?



# Award: Inspector/Evaluator

## The Palm Beach Post

REAL NEWS STARTS HERE

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### Ex-WPB official fined as Gov. Ron DeSantis hands out ethics penalties

By Jeffrey Schweers, Tallahassee Democrat

Posted Feb 12, 2020 at 1:00 PM

Gov. Ron DeSantis handed out a \$4,500 to former West Palm Beach Communications Director Elliot Cohen for misusing his position to solicit business for his private company.



# Award: Inspector/Evaluator

## The Palm Beach Post (cont'd)

Cohen remained under contract with RMA without telling the mayor, city administrator or city ethics officer. Also troubling, the Office of Inspector General found *"a spike of communication"* between Cohen and RMA's chief executive during the bidding, while Cohen had access to confidential information that could have helped the company.

The three alleged violations — misuse of his public office, soliciting business for his firm and having a contract with the bidder — could have led to penalties ranging from public censure, reprimand or a civil penalty of up to \$10,000 per violation.





# Award: Inspector/Evaluator

## Public Announcements, & Protests

- Was the intent to award required to be publicly noticed prior to award?
- Were any protests filed?
- Was the protest timely?
- What was the basis of the protest?
- What is the protest process?
- What was the outcome of the protest?
- *In procurement matters, monitor the protest process but be wary of becoming a participant!*



# Award: Inspector/Evaluator

## Canyon District Park – Special Magistrate Hearing

The Protest is DENIED and it is RECOMMENDED that the Director of Purchasing proceed with the posted award recommendation.

- The original ranking of PROTESTOR as the top-ranked Proposer was erroneous.
- The re-ranking of the Proposals, resulting in selection of another Proposer, was a proper remedy for correction of the error in ranking and did correct the original error.
- The evidence of improper influence and ethical conflicts did not support a claim that is within the subject matter jurisdiction of this Special Master such that it would support upholding the Protest.



# Award: Inspector/Evaluator

## Canyon District Park – Special Magistrate Hearing (Cont'd)

A possible maxim relevant to this case might be a variation of Occam's Razor which holds that one should not make more assumptions than the minimum needed. Instead, it might say as follows: ***“Do not attribute to malice that which can be explained by error, even in dealing with government.”***

The GOVERNMENT discovered an error and corrected it prior to final approval. The procedures used to effectuate the correction were reasonable. The suggestions of the “smoke” of improper influence are not supported by the “fire” of proof.



# Award: Inspector/Evaluator

## Negotiations, Surety/Bonding/Insurance, Contract Approval

- Are negotiations required to be public or recorded? (Florida Public Records Law: team meetings versus 1-on-1 negotiations)
- Is the surety, bonding, or insurance agent authorized to do business in your state? Are the document signatures complete, authorized, and properly dated? Have they been notarized in accordance with the laws of your state?
  - Surety “tricks”...
    - Photocopy of bonds and insurance documents from other projects.
    - Signed by “Jim”. (Yes, it happened.) Unauthorized, or missing signatures.
    - Improper dates, particularly the year, which renders the document non-binding.
    - Improper notarization language, undated, or lacking critical information such as the signer’s ID.



# Award: Inspector/Evaluator

## Negotiations, Surety/Bonding/Insurance, Approval

- Was the final contract approved by the proper authority?
- Are the terms and conditions the same as in the bid, or as required by Code or Rule?
- Is the scope of the work or specifications the same as bid and proposed?
- Has the term of the contract been changed?
- Have all the final certifications been obtained, such as a Truth In Negotiations Act (TINA) certificate?



# Award: Inspector/Evaluator

## GSA IG Report, A170118, Improper Pricing

Federal Acquisition Services did not award Contract Number GS-10F-0118S for Management Consulting Services in accordance with applicable laws, regulations, and policies.

Specifically, the Division Director:

- Used invalid price comparisons.
- Relied on unsupported information.
- Performed insufficient analyses to justify the awarded contract pricing.
- Violated standards of conduct by advocating for vendor to other procurement officials.
- Failed to take appropriate action as required by the Federal Acquisition Regulation to obtain required data to complete the pre-award audit.



# Post-Award: Inspector/Evaluator

**Post-Award:** The process that occurs after the contract agreement is executed through close-out.

- Contract administration
- Amendments
- Change Orders
- Receipt/Delivery/Acceptance
- Invoicing & payments
- Final payment & close-out



# Post-Award: Inspector/Evaluator

## Contract Administration, Change Orders, & Amendments

- Are the vendor and the public entity complying with the terms of the contract?
- Who is administering the contract? Are they qualified and trained?
  - Decentralized vs centralized procurement.
- Is the public entity practicing reasonable and effective oversight of the vendor's performance?
  - What standard is the contract administration program being evaluated against?
- Is there a contract administration program?
- Have the contract risks been analyzed?



# Post-Award: Inspector/Evaluator

## Contract Administration, Change Orders, & Amendments

- Have contract terms and requirements been changed by contract administration, but not legally changed by an amendment to the contract?
- Are change orders issued against contract purchases that are contrary to the terms of the contract?
- Are change order requests properly reviewed and approved? Are change orders approved in advance?



# Post-Award: Inspector/Evaluator

## Massachusetts DOT's Veterans Memorial Bridge – OIG ISAU

MDOT paid \$7 million to design the bridge, and subsequently paid the same A&E \$9.2 million in consulting fees for work that were A&E errors. This was wasteful, and not in accordance with the A&E's contract, which expressly prohibited payment to correct, complete or clarify its own work.

MDOT used extra work orders to pay the CM \$5 million to operate and maintain the bridge for two years non-competitively. When the service was finally bid, the cost decreased substantially. The agency would have saved money if it originally conducted a public procurement.

MDOT paid the CM \$932,698 to paint the steel beams on the bridge when, according to the specifications, the beams were to be left unpainted.





# Post-Award: Inspector/Evaluator

## Receipt/Delivery/Acceptance

- Are items properly received before payment? Is the invoice properly approved?
  - Is a two or three-way match performed when reconciling invoices?
    - Contract/Purchase Order-Invoice-Receiver
- Is the contract administrator tracking deliverables, material submissions, and reports?

## Palm Beach County OIG Report, CA 2018-0023, SWA Disparity Study

SWA did not properly manage the contract agreements with the Disparity Study Consultant and the RFP Consultant resulting in: (1) overpayment of the RFP Consultant contract amount, (2) payments that could not be verified against the scope of work and contract deliverables, (3) payment of incorrect and incomplete invoices, and (4) issuance of purchase orders totaling more than the RFP Consultant's contract amount.



# Post-Award: Inspector/Evaluator

## Receipt/Delivery/Acceptance

Common contract administration mistakes with respect to deliveries include:

- Employees ordering extra items from the warehouse or contractor operated stores for personal use or business. Construction scrap/overages. Materials bought are not found in inventory.
- Officials signing receipts for materials not delivered or delivered elsewhere like a home.
- Material substitutions for lower grade items, especially with construction materials: lumber, asphalt, gravel, fill, concrete, drywall, and metals...such as wiring, aluminum studs, and rebar.



# Post-Award: Inspector/Evaluator

## Invoicing & Payments

- Was the invoice proper for payment?
  - Prices, item descriptions, quantities, mathematically correct, discounts, full or partial shipments, FOB terms.
- Does the invoice have the required back-up or supporting documentation?
  - Especially important on re-determinable cost items, such as: labor hours, subcontractor/parts invoices, reimbursable expenses, and weight/delivery tickets for bulk materials like asphalt and concrete.
- Does the payee match the vendor name in the contract? Do the remittance addresses match? Do the FEID numbers match?



# Post-Award: Inspector/Evaluator

## Palm Beach County OIG Report, Case Number 2015-0003

While conducting a purchasing audit, the OIG identified purchases from a vendor with an address that matched the employee file. The vendor provided various items to the City, including street signs, street sign posts, and reflective sheeting.

Florida Department of State records identified the registered agent for the company as the City's Treatment Plant Operator. The business address listed for the company matched the City employee's home address. Further inquiry revealed that a second City employee, the Traffic Maintenance Supervisor was also an authorized signatory on the company's bank account.

In 5 years, the City made 24 purchases from this vendor totaling \$129,484.79. The City Traffic Maintenance Supervisor had direct responsibility for all aspects of the City's purchases from this vendor, including inventory control, obtaining quotes, and processing purchase orders.





# Post-Award: Inspector/Evaluator

## Palm Beach County OIG Report, Case Number 2015-0003 (cont'd)

Both individuals failed to disclose to the City their business interests and/or outside employment with the vendor, and subsequently circumvented the City's procurement processes in order to direct business to their company. Also, the individuals inflated their invoices by billing the City for more products than it actually delivered.

A law enforcement investigation subsequently found that a third suspect, the former City Streets & Traffic Superintendent, was also involved in the scheme to defraud the City.





# Post-Award: Inspector/Evaluator

## Final Payment & Close-Out

- A contract close-out occurs when a contract has met all the terms of a contract, all administrative actions have been completed, all disputes settled, and the final payment has been made.
- Construction final payments usually include the payment of retainage, release of liens from prime and subcontractors, and provides warranty/surety guarantees.
- Close-out can include a final accounting of the project, release of excess funds, and reconciliation of the property & asset records.
- Most public entities with large value contracts and construction projects have some form of a final payment/close-out checklist or prescribed close-out policy.
- Public entities may utilize close-out specialists, auditors, or may require higher level approvals before any contract can be closed.



# Questions or Comments