



# Strengthening State Procurement Practices

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*Producing the Best Results for New Yorkers*

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New York State  
Office of the State Comptroller  
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## ***Executive Summary***

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In 1995, the Procurement Stewardship Act was enacted to encourage fair competition in the awarding of State contracts. Although the Act has been largely successful, its scheduled sunset on June 30, 2006 provides an opportunity for review of its provisions and consideration of enhancements to further improve New York's procurement practices. The time has come to modernize and streamline the process through which government entities in New York award contracts and to ensure that scarce public resources are used in the most effective possible manner.

State agencies, the Office of General Services (OGS), the Office of the State Comptroller and vendors interested in doing business with the State all play important roles in promoting fairness in the award of State contracts. How each entity fulfills its role is either expressly defined or generally guided by various State laws and regulations. In the case of State agencies, for example, in addition to provisions of State finance and economic development law, guidance for procurement policies and procedures is provided through the State Procurement Council. In addition, State agencies rely on training and technical support offered by both the Office of the State Comptroller and the Office of General Services to effectively carry out their contracting responsibilities.

Consistent with the goal of getting the best quality goods or services for the lowest possible price, competition in awarding contracts is always desirable. Specific thresholds defined in law determine the minimum contract value for which competition is mandatory and a formal award process must be followed. In addition, when awarding contracts at values greater than the prescribed thresholds, agencies making awards must document all steps taken to ensure fair competition and factors influencing contracting decisions; this documentation serves as the official procurement record for each contract awarded.

The current threshold for State contracts requiring pre-audit and approval by the Office of the State Comptroller generally is \$15,000. The procurement record is reviewed by the Comptroller's staff to ensure the contract was awarded fairly and applicable laws were followed, and the contract itself is reviewed to determine that the terms are reasonable. The same contract value, \$15,000, sets the threshold for contracts to be awarded on a formal competitive basis. Contracts involving the purchase of commodities or services from a small business, or certified minority- or women-owned business enterprise or recycled or remanufactured products have a higher threshold for competition, a value over \$50,000. The Office of General Services, which acts as the central procuring agency for the State, also is able to make purchases up to \$50,000 without competition; it can currently award contracts valued at up to \$30,000 without approval from the Office of the State Comptroller.

During State fiscal year 2003-04, the Office of the State Comptroller reviewed 42,073 contract transactions valued at more than \$25 billion. Of these transactions, approximately 15,000 were new contracts and purchase orders and 27,000 were

amendments to existing contracts and purchase orders. Of the 15,000 new contracts approved by the Office of the State Comptroller, 960 were centralized contracts procured by the Office of General Services, and they had an estimated total value of \$1.2 billion.

Goods and services procured through centralized or statewide contracts, intended to allow for volume discounts, are also available to local governments across the State. The General Municipal Law of the State of New York, as well as local policies and procedures, govern local government contracting. For example, the General Municipal Law sets thresholds for sealed competitive bidding in awarding purchase contracts and contracts for public work. Current thresholds have been in effect since 1991.

While competitive procurements have a clear value in ensuring that government entities get their money's worth, it is important to consider the best use of limited government resources and taxpayer dollars. At the State level, procurements valued between \$15,000 and \$50,000 comprise an estimated 23 percent of all new contracts handled by agency employees and reviewed by the State Comptroller, but account for only 1 percent of the dollars spent pursuant to contracts. These procurements represent a great deal of work to protect against a fairly low risk. While corresponding data is not available for local government procurements, local officials have complained that the threshold requiring competition for purchases valued at more than \$10,000 and contracts for public work valued at more than \$20,000 is straining resources.

As part of the effort to modernize State and local procurement practices, Comptroller Hevesi recommends increasing the State threshold for both formal competition and Comptroller approval to \$50,000. To provide local relief, an increase to \$20,000 is recommended for the purchase threshold and \$50,000 for the public work threshold.

Existing law at the State level provides an incentive for agencies to do business with small businesses and certified minority- and women-owned businesses and to purchase recycled or remanufactured products. In order to maintain this incentive, it is recommended that State agencies be allowed to enter into contracts valued up to \$100,000 with these entities or for such purchases without formal competitive procurement. Proposed changes to the General Municipal Law would create an incentive for local governments interested in making purchases from certified minority- and women-owned businesses by creating an exception to the bidding requirement for purchases below \$25,000 from such entities. Comptroller Hevesi also recommends a change to the General Municipal Law to ensure that local governments, which use credit cards for smaller purchases of services or commodities, have in place a system of internal controls.

In all procurements, government must ensure it is doing business with reputable, reliable firms. Not only is determining that the proposed contractor has the integrity to justify the award of public dollars, as well as the capacity to fully perform requirements of the contract—in other words, that the vendor is responsible—good business practice, it also is demanded by the law. Effective January 1, 2005, State agencies are required to

include in the official procurement record reviewed by the Office of the State Comptroller evidence that officials have determined that the vendor is responsible.

Absent a central review of responsibility determinations, State agencies developed a variety of tools to solicit information from vendors that would help show whether or not they are responsible. As part of the Office of the State Comptroller's efforts to streamline procedures and eliminate unnecessary hurdles for vendors seeking to do business with New York State, the Office of the State Comptroller is launching an initiative to automate and standardize information gathering. This initiative also will provide a central repository for data gathered from vendors so that they do not have to duplicate efforts with every proposed contract submission. The Office of the State Comptroller is committed to working with State agency officials, as well as representatives of the vendor community, to develop a straightforward, effective system.

A variety of aspects of the Procurement Stewardship Act (PSA) are inconsistent with the goal of reducing bureaucracy and facilitating greater participation in State contracting by a variety of vendors. Comptroller Hevesi proposes seven substantive changes to the Procurement Stewardship Act.

**Program Procurements:** Terms of the PSA should be modernized to recognize that for-profit entities, as well as not-for-profit organizations often compete for grant-type awards for services that had traditionally been confined to the not-for-profit arena. Currently, the award of grants to fund specific programs run by not-for-profits are not subject to the same competitive standards set by the PSA for other types of procurements. Once the competition involves for-profit entities, however, the rules of the PSA apply even though they may not make sense for this type of procurement. The proposed amendment would define program procurements and provide for consistent treatment whether or not for-profits are competing for grant dollars to run government programs. As a result, program procurements would produce awards based on technical merit and public benefit, while at the same time ensure that the costs are reasonable.

**Debriefings:** Although Procurement Council Guidelines call for State agencies to provide unsuccessful bidders an explanation of the reasons their proposal was not selected, in practice, many competitors are not being afforded this courtesy. As a result, vendors often contact the Office of the State Comptroller either unaware of the status of their proposal or to raise concern that they might have been treated unfairly. If an unsuccessful bidder is not satisfied that the procurement was conducted fairly, the vendor may have to resort to litigation, thereby delaying contract award and imposing costs for both the vendor and the State. A legislative clarification of vendors' rights to be debriefed before the contract is submitted to the Office of the State Comptroller for approval would improve transparency by requiring that documentation of debriefings become part of the procurement record. Debriefings also will help vendors learn why their proposal was unsuccessful and increase the chances for success in subsequent competition.

**Piggybacking:** While the PSA provides for agencies to take advantage of another existing State contract by piggybacking, it does not detail the factors to be considered

by an agency when determining if this is the best available option. The Office of General Services has offered guidance to agencies that should be codified in law. In addition, agencies deciding to enter into piggyback contracts should be required to document the reasons this decision was in the best interest of the agency and the State.

**Aggregating Purchases:** The law currently is unclear about timeframes in which thresholds apply, but case law suggests it is intended to mean a one-year period. As a result of the lack of clarification in law, some State agencies do not comply with the spirit of the law by entering into several contracts with the same vendor to meet the same or similar needs with each contract valued at less than the threshold requiring competition or Comptroller approval. This practice is known as split purchasing. Clarification is recommended so that the thresholds apply to contracts to meet the same or similar needs awarded within a one-year time period.

**Ability to Waive Minor Deviations:** There are instances where procurements handled fairly cannot result in the award of a contract because of a minor flaw in complying with the process or where the best qualified, lowest price vendor did not comply fully with the rules. In these cases, despite good faith efforts by both the agency and vendors, and efforts by the Office of the State Comptroller to save the procurement without undermining the intent of the law, time spent on the procurement was wasted. The Office of the State Comptroller proposes a change in the law that would allow it to waive minor deviations in the process and still allow for the award of procurements that are otherwise consistent with the law.

**Creative Procurements:** It is recommended that the PSA allow for the Office of the State Comptroller to work with State agencies to craft creative or pilot procurement methods in situations not anticipated under the law. This authority would be employed judiciously, only when it is in the best interest of the State, when unusual and compelling circumstances are involved and when the procurement process can be applied fairly and equitably.

**Strategic Partnerships:** At the time the PSA was enacted, it was envisioned that State agencies would enter into unique arrangements with businesses to meet a variety of needs. The provision has not been used successfully and is unnecessary because the law allows for the award of contracts to uniquely qualified entities on a single source basis. Therefore, it is recommended that language providing for strategic partnerships be removed from the PSA.

Comptroller Hevesi also favors improvements to State procurement practices recommended by others, including proposals to strengthen prompt contracting rules and efforts to limit outside influences in the award of contracts. Not-for-profit organizations have formed a coalition to correct flaws in existing laws that require State agencies to handle their contracts in a timely manner or pay interest to offset the costs of delay. The Office of the State Comptroller would play a role in determining when the payment of interest is appropriate and reporting timeliness of contracting; Comptroller Hevesi supports the goal of the proposed legislation.

With regard to limiting influences that might skew procurement results, the Comptroller has voiced support for a bill passed by the Assembly—the language of which also is included in the Public Authority Reform Act proposed by Comptroller Hevesi and Attorney General Spitzer that also passed the Assembly. Similar to a proposal put forth by the Governor, the proposed law would require disclosure by lobbyists hired to attempt to win State contracts for their clients and would designate a period during which communications regarding a procurement that is underway would be restricted.

Although New York has not been involved in contracts or other scandals involving misappropriation of State funds of a magnitude equal to those that have affected the highest levels of government in our neighboring states, it has not been entirely sheltered from the appearance of wrongdoing either. The scheduled sunset of the PSA provides an opportunity to strengthen our laws and improve our State's procurement practices. As the central entity that reviews all State procurements above the threshold established in law and makes payments pursuant to contracts, the Office of the State Comptroller is uniquely positioned to recommend improvements.

The legislative reform agenda proposed by Comptroller Hevesi is intended to modernize the rules governing procurements at both the State and local levels and ensure that resources are available to provide oversight of higher value procurements. The Office of the State Comptroller will achieve this objective through improved processes to determine vendor responsibility and increased oversight of high value contracts entered into by State agencies pursuant to statewide contracts procured by OGS, which currently are not examined in any systematic way. At the same time, the agenda creates increased opportunities for small businesses, minority- and women-owned businesses, recycled/remanufactured products, and supports fair treatment of all competitors by reducing the influence of lobbyists and supporting prompt contracting with not-for-profit entities. The series of reforms proposed for the Procurement Stewardship Act reflect lessons learned over the past decade. They provide for reasonable flexibility with appropriate safeguards so that unsuccessful bidders can learn how better to compete, well-intentioned procurements are not scrapped due to a technicality and creative solutions are possible in compelling cases. The reforms also provide clarity in the law where it is lacking.

This report describes the laws and rules currently governing procurements in New York State, which are complex and often not widely understood by either staff at contracting agencies or vendors seeking to do business with the State. From the perspective of the Office of the Comptroller, which works with agencies and vendors to ensure the integrity of State procurement practices and resulting contracts, it identifies problems with the current system and provides a statistical overview of contract volumes and timeframes. Finally, it offers recommendations for improving contracting practices in the State.



New York State agencies are subject to a procurement process through which commodities and services are obtained. This procurement process, established in the State Finance Law, governs State agencies only.<sup>1</sup> Local governments must follow procedures outlined in the General Municipal Law, and there are limited rules governing procurements by public authorities in the Public Authorities Law.

### Office of the State Comptroller

Article V, Section 4 of the New York State Constitution designates the Comptroller as the head of the Department of Audit and Control. A 1925 constitutional amendment added the function of “pre-audit” to the Comptroller’s duties.<sup>2</sup>

Section 112(2) of the State Finance Law requires review and approval by the Comptroller of all State contracts in excess of \$15,000.<sup>3</sup> The purposes of this requirement include protecting the public from governmental misconduct and improvidence and ensuring that contracts are fair and reasonable.<sup>4</sup> The Comptroller’s review ensures State agency compliance with a number of statutory requirements regarding contract procurement, the most comprehensive of which are set forth in Section 163 of the State Finance Law, which was added by the “Procurement Stewardship Act” (PSA) of 1995. The PSA established operating principles “to facilitate each state agency’s mission, while protecting the interest of the state and its taxpayers and promoting fairness in contracting with the business community.”<sup>5</sup> The Office of the State Comptroller follows the operating principles of this Act and considers various other factors in its review of State agency contracts.

The Bureau of Contracts within the Comptroller’s Office pre-audits State contracts before they become effective to determine whether they comply with statutory and regulatory procurement requirements and whether the terms are reasonable. To determine whether a proposed contract should be approved, Bureau of Contracts staff may pose audit questions to the State entity that is awarding the contract. The questions are designed to ensure that the contract is in the best interest of the State and that the procurement process has been properly followed.

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<sup>1</sup> Sections 112 and 163 of the State Finance Law establish procurement procedures for State agencies. The General Municipal Law establishes procurement procedures for local governments, while the procurement conducted by public authorities is subject to various sections of law.

<sup>2</sup> Constitutionally, the New York State Comptroller is required to “audit all vouchers before payment and all official accounts....” Article V, Section 1 of the New York State Constitution.

<sup>3</sup> Chapter 95 of the Laws of 2000 raised the threshold for the pre-approval of contracts by the State Comptroller from \$10,000 to \$15,000. This legislation also raised the threshold for discretionary purchases by the Commissioner of General Services from \$30,000 to \$50,000. This conformed to the increased discretionary purchasing authority for State agencies to buy up to \$50,000 of commodities and services from small businesses and minority- and women-owned business enterprises, and of recycled and remanufactured products.

<sup>4</sup> *City of New York v. State of New York*, 87 N.Y.2d 982 (1996); *Parsa v. State of New York*, 64 N.Y.2d 143 (1984); *Konski v. Levitt*, 69 A.D.2d 940 (3d Dep’t, 1979).

<sup>5</sup> Section 163(2) of the State Finance Law.

There are also several statutory requirements the State Comptroller must meet concerning procurement:

- Section 8(17) of the State Finance Law requires the Comptroller to report annually to the Legislature, on or before May 1, on the previous fiscal year's consulting services contract awards.
- Section 163(14) of the State Finance Law requires the Comptroller to report annually to the State Procurement Council, Governor and legislative fiscal committees on the previous fiscal year's active procurement contracts above \$15,000.
- Section 9(5) of the Public Buildings Law requires the Comptroller to report annually to the Legislature, on or before January 31, on all construction emergency contracts over \$10,000 let under that statute.

During State fiscal year 2003-04, the Office of the State Comptroller reviewed 42,073 contract transactions valued at more than \$25 billion. Less than 4 percent of the contracts reviewed were returned unapproved for a variety of reasons.

## **State Procurement Council**

The Procurement Council is charged with issuing recommendations to improve State procurement policies and practices, and guidelines to govern State agency procurements. Established under Section 161 of the State Finance Law, this Council meets quarterly.

By statute the Procurement Council of New York State is comprised of 19 members and is chaired by the Commissioner of the Office of General Services (OGS). Members of the Council include the State Comptroller, the Director of the Budget and the Commissioner of Economic Development or their designees, seven heads of large and small State agencies appointed by the Governor, and eight at large members (three appointed by each of the legislative majority leaders and one appointed by each of the legislative minority leaders). Two seats, one of which is subject to appointment by the Assembly Speaker and one of which is subject to appointment by the Senate Minority Leader, are currently vacant. Two non-voting observers are also appointed by the legislative majority leaders.

The Procurement Council must report every two years (starting in December 1995) to the Governor, the Legislature and the Director of the Budget on its recommendations concerning the State's procurement practices, as well as substantial savings generated by council initiatives.

Most recently, in November 2004, the Procurement Council adopted a resolution to recommend removal of the sunset provision of the Procurement Stewardship Act, which was scheduled to expire on June 30, 2005, but has been extended to June 30, 2006.

## **Office of General Services**

In addition to chairing the State Procurement Council, the Office of General Services (OGS) acts as the central procuring agency for the State. OGS negotiates contracts for significant quantities as it leverages the State's buying power by combining State and local government agency needs. Political subdivisions, which include cities, towns, villages, counties, fire districts, public libraries, BOCES and school districts, in addition to other entities, such as volunteer ambulance and fire companies, private libraries, schools and colleges, are eligible to purchase through the use of contracts awarded by OGS. These centralized procurements can achieve administrative savings since OGS handles bid solicitation and evaluation and contract development and management.

A portion of OGS contracts are large volume contracts for single agencies or groups of agencies. The majority of the thousands of OGS contracts, however, are statewide contracts. To further assist procuring entities, OGS offers a wide range of procurement information on its website and provides training and assistance to State and local employees in charge of procurement.

## **Procurement Stewardship Act**

The Procurement Stewardship Act (PSA) was enacted in 1995 to provide a comprehensive statement of the requirements for public contracting and to promote competition in the public procurement of services and commodities. Equally important, the legislation was enacted to protect public funds by preventing favoritism, fraud and corruption in awarding public contracts. The PSA is contained in Section 163 of the State Finance Law.

The PSA provides:

- A competitive bidding process for services,
- The "best value" award criteria, and
- The ability to streamline the procurement process and cut administrative costs by allowing the use of contracts awarded by other governmental entities.

The original legislation was scheduled to sunset five years after enactment of the PSA, but Chapter 95 of the Laws of 2000 extended the provisions of the Procurement Stewardship Act to June 30, 2005.<sup>6</sup> The sunset was extended until June 30, 2006 in legislation enacting the 2005-06 budget.

Section 163(3)(b)(iii) of the State Finance Law requires OGS, with the assistance of the Department of Economic Development and other State agencies, to maintain and

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<sup>6</sup> See Section 1 of Chapter 95 of the Laws of 2000.

make available to local governments and all other authorized purchasers current lists of small businesses in New York and certified minority- and women-owned business enterprises in order to enhance the number and types of procurement opportunities for those business enterprises.<sup>7</sup> This provision was added by Chapter 95 of the Laws of 2000 to benefit “the economic position of such businesses with a positive contribution to the State’s economy.” It was also noted in the legislative history that “training for minority- and women-owned business enterprises will further advance and improve the participation of such business enterprises in the public procurement process.”<sup>8</sup>

The PSA, in large part, codified the requirements for competitive procedures developed by the Office of the State Comptroller as part of its pre-audit review. The PSA also, however, added additional requirements and specific details relating to the procedures applicable to the procurement of services and technology. Prior to enactment of these provisions, procurement law designed to obtain the lowest price did not always result in the best solution as agencies sought to purchase services and technology.

Since the PSA expiration was extended until 2006, it is appropriate that the merits of the existing procurement process be the subject of debate in the current legislative session. At this time, more than a simple extension of the PSA is needed. Although the PSA provides a critical framework for procurement decisions, various issues, some of which impede a fully documented and timely review process, have become apparent during the decade the PSA has been in effect. The amendments to the PSA and other laws proposed in this report will help to resolve these issues, further improving the efficiency of the entire procurement system.

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<sup>7</sup> Section 160(8) of the State Finance Law defines a small business as a "business which is resident in this state, independently owned and operated, not dominant in its field and employs 100 or less persons."

<sup>8</sup> Memorandum in Support, New York State Senate. *McKinney's Session Laws 2000*: 1539.

## ***Procurement Responsibilities in New York State***

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New York State's procurement practices are designed to provide checks and balances throughout the process. There are a number of entities that play a role in the procurement process: the agency awarding the contract, the Division of the Budget, the Attorney General and the State Comptroller. Agencies determine which vendors will provide commodities and services. The Division of the Budget reviews the financing requested by the agencies. The Attorney General reviews the form of the contract, and the Office of the State Comptroller exercises its pre-audit authority by reviewing the contract itself, as well as the contract process.

The Governor appoints State agency commissioners. The Governor and Legislature jointly enact the State budget, which includes appropriations for the agencies. Agencies first determine their needs and then obtain release of the funds from the Division of Budget before following a procurement process enacted by the Legislature.

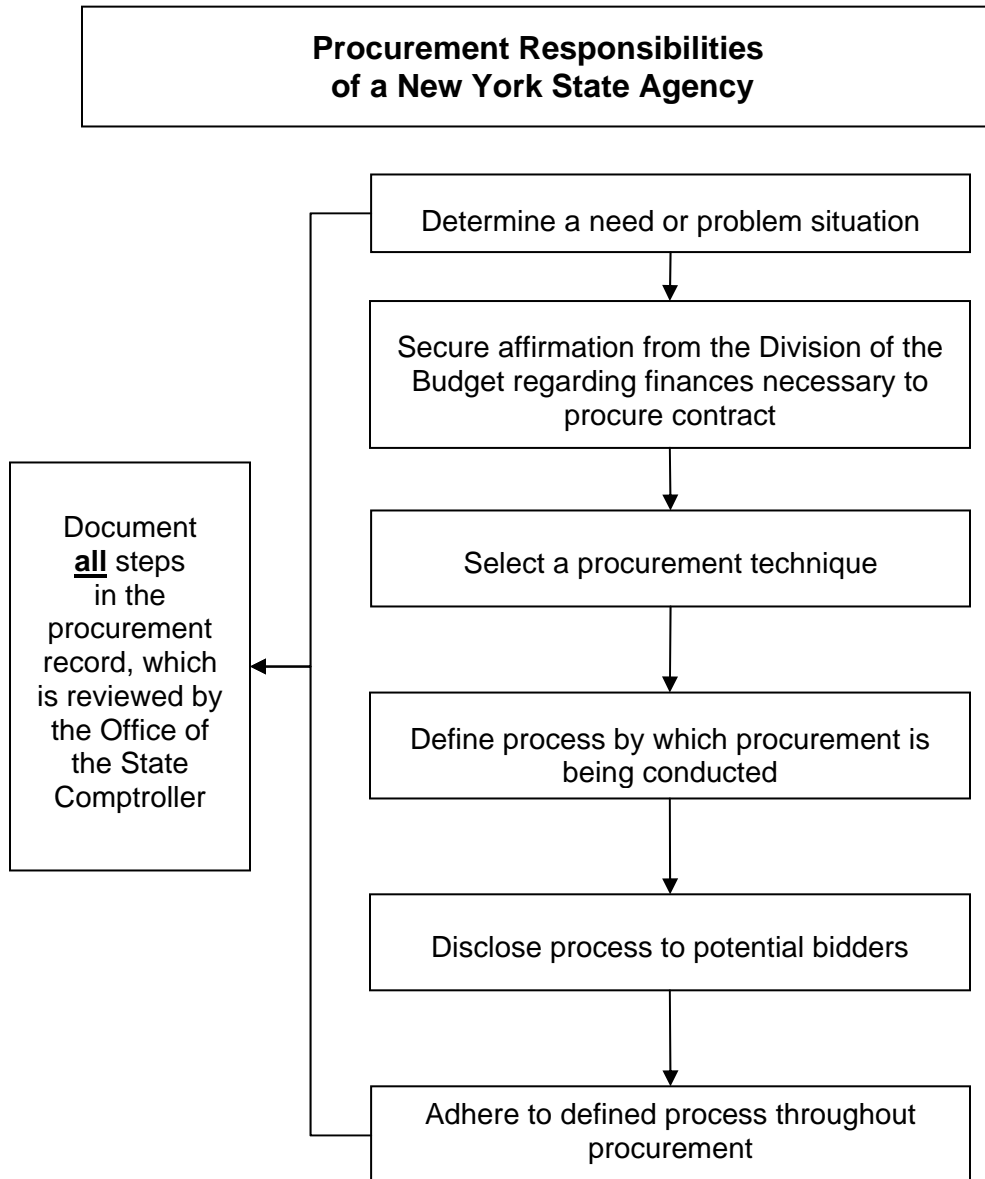
The operating principles of the Procurement Stewardship Act (PSA) establish objective criteria for all to follow during the procurement process, as well as the review phase:

- The agency identifies the need and undertakes the procurement while adhering to the standards of the PSA. The agency must justify the decisions it makes throughout the contract process with documentation in the procurement record,
- The Division of the Budget certifies that the agency will be provided the necessary funds under the State's budget for the fiscal year,
- The Attorney General reviews the contract to assure the inclusion of mandatory terms and conditions and to examine the State's liability, and
- The Office of the State Comptroller reviews the contract, as well as the procurement record, in accordance with State Finance Law, Section 112, and to ensure that the PSA standards have been complied with, and that the contract is fair and reasonable and in the best interests of the State.

### **State Agency Responsibilities**

The State agency is responsible for determining the need and then selecting and documenting the appropriate procurement method in response to it. These decisions comprise the initial entries in the procurement record. The agency must fully document the steps taken in the procurement process. This documentation becomes the historical record, as well as the basis for the Office of the State Comptroller's review.

Specifically, the agency must define the process by which the procurement is being conducted, disclose the process to potential offerers, adhere to the process while conducting the procurement and document this process in the procurement record. The procurement record is designed to both serve and protect agencies and the business community during and after the procurement. The objective of the contractor selection process, as documented in the procurement record, is to determine the lowest price or best value offer among responsive and responsible offerers in accordance with the method of award.



During the procurement process, a number of actions are required by the State agency. The agency must:

- Publish in the *State Contract Reporter*, in conformance with applicable statutes and guidelines, notice of every procurement opportunity estimated to be worth more than \$15,000,
- Make reasonable efforts to identify potential offerers and to maintain and update listings,
- Contact all known offerers identified through the process when the agency issues an Invitation for Bids (IFB) or Request for Proposals (RFP),
- Publish the bid or proposal due date and time in the IFB or RFP,
- Prepare a certified listing of the offerers, which have submitted timely bids or proposals,
- Complete the development of the evaluation instrument prior to the initial receipt of bids or proposals, and
- Evaluate bids or proposals in accordance with the evaluation criteria established prior to the receipt of bids or proposals.

A number of other actions are optional during the process. The State agency may:

- Allow questions regarding the IFB or RFP,
- Arrange a Bidders' Conference,
- Develop communication strategies with offerers, balancing the need to refine requirements, specifications and expectations of the agency with the need to disseminate information to offerers concerning the agency's needs,
- Award all or parts of the proposed contract provided that such agency discretion is set forth in the IFB or RFP,
- Elect to not award a contract, and
- Award a contract to an offerer if only one proposal is submitted.

## **Office of General Services Responsibilities**

The Office of General Services (OGS) conducts procurements to obtain aggregate volume discounts or best value on behalf of State agencies. In doing so,

OGS may use a backdrop or mini-bid format for contracts to procure commodities, technology or services. OGS develops a backdrop of pre-qualified contractors from which the end-user solicits bids in some type of secondary, and specified, selection process. This precludes an agency's need to issue its own Invitation for Bids or Request for Proposals and negotiate its own contract, which provides a savings in time and expense. Most backdrop contracts contain pricing which the bidder cannot exceed.

One type of secondary selection process for a backdrop contract is the mini-bid, which is used when competitive pricing is a priority for the purchasing entity. These types of contracts include a brief form that is completed by the ordering agency and sent to vendors who are eligible to bid on the project. The agency then evaluates the bids received and selects the offer providing the best value.

To maximize the number and variety of contractors available through State contracts, OGS conducts continuous recruitment for many of these centralized contracts. In 2003-04, a total of 3,312 active, OGS centralized contracts with an estimated total value of \$7.6 billion were available for use by eligible entities across the State.<sup>9</sup> Most contracts resulting from agencies purchasing pursuant to these statewide contracts do not currently undergo review by the Comptroller. The current lack of review by the Office of the State Comptroller at the point an agency enters into a contract creates a risk for the State. Additional pre-audit by the Comptroller will ensure agencies are making best value decisions and complying with the terms of usage envisioned when the terms of the statewide contract were enacted.

## **Office of State Comptroller Responsibilities**

The Comptroller's role is not to supplant the professional judgment of agency staff in making factual determinations, but is to assure that procurement decisions are reasonable, consistent with law, and in the best interest of the State.

As the Bureau of Contracts reviews the procurement record for contracts or purchase orders exceeding \$15,000, it examines the following:

- Where applicable, evidence of advertising,
- Invitation for Bids (IFB) or Request for Proposals (RFP),
- Evaluation instrument and process description,
- Pre-bid conference questions and answers,
- Any additional documentation provided to bidders or proposers,
- List of bidders or proposers solicited,

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<sup>9</sup> Active contracts are defined as contracts with any expenditure during the current fiscal year.

- Contract,
- Bid tabulation or the record of proposal evaluation,
- Documentation that supports the agency's determination of vendor responsibility,
- Successful proposals in addition to the unsuccessful proposals,
- Documentation that supports the selection of the contractor,
- The reasonableness of the price,
- Verification that all statutory and regulatory requirements have been met, and
- Compliance with disclosure requirements of Executive Order 127.<sup>10</sup>

In the pre-audit function, the Bureau of Contracts verifies that a competitive process was used where the law requires such a process, and the contract was appropriately awarded, on the basis of lowest price or best value, to a responsive and responsible offerer. For contracts not competitively awarded, the Bureau of Contracts reviews the procurement record for restrictive specifications and the agency's justification for the method used in awarding the contract. In these cases, the Office of the State Comptroller requires justification for how the vendor was selected and for the reasonableness of the terms.

Regardless of the type of procurement method used by the agency, the pre-audit function as exercised by the Office of the State Comptroller is critical to ensure that contracts, as well as vouchers for payment, which commit New York State to a liability, are reasonable. Office of the State Comptroller staff members work directly with State agencies in a collaborative approach to develop successful procurements that provide the best value for the State while maximizing competition. Appendix A details examples of the types of assistance the Bureau of Contracts provides to agencies throughout the process.

Section 112 of the State Finance Law allows 90 days for the Comptroller to make a final determination regarding approval of a contract. The Comptroller's average contract approval, however, took only seven calendar days in State fiscal year 2003-04. The process for approving grants to not-for-profits averages five days, while the process for all other contracts averages nine days, as indicated in Appendix B (see Annual Average Processing Time table). The time it takes an agency to develop the procurement prior to its receipt by the Comptroller's Office is much longer. The long development time, as much as nine months, can be attributed to many factors, including the complexity of a bid or RFP, an agency's lack of technical expertise or subject knowledge in the procurement subject, understaffing and limited administrative support.

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<sup>10</sup> See page 36 for a summary of Executive Order 127.

If the agency does not appropriately develop a procurement record, the Comptroller's staff must return the contract to the agency for further documentation. The Office of the State Comptroller approved 96 percent of the 42,073 contract transactions reviewed during the State fiscal year 2003-04. In that same year, 1,707 contract transactions were returned unapproved; however, some of these were subsequently approved based on additional documentation.

## **Vendor Role in Procurement Process**

An additional check on the procurement system is the critical role fulfilled by competitors seeking State contracts.

### ***Debriefings***

Regardless of the method of award, successful bidders may be notified of their selection, contingent upon contract approval by the Office of the State Comptroller. Unsuccessful bidders should be notified as soon as possible after selection. Debriefings for unsuccessful bidders should be provided upon request.<sup>11</sup>

### ***Bid Protests***

Incorporating a fair mechanism to evaluate bid protests helps to ensure a level playing field for all vendors.

- Protests should be filed either with the procuring agency or the Office of the State Comptroller.
- Most protests are, in fact, handled at the agency. Some vendors, however, protest to the Office of the State Comptroller simultaneously and some protest only to the Office of the State Comptroller.
- The Office of the State Comptroller's standard practice is to consult with the agency when considering a protest.
- Whenever a protest is involved, the Office of the State Comptroller reviews the protest as part of its review of the procurement record.

During State fiscal year 2004-05, 21 protests against bid awards were considered by the Office of the State Comptroller. This is particularly significant when considering more than 40,000 transactions were reviewed by the Comptroller's staff.<sup>12</sup>

Although most of the 21 protests were not upheld and the contracts were ultimately approved by the Office of the State Comptroller as submitted by the agency, it

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<sup>11</sup> "Procurement Guidelines." New York State Procurement Council. Section VI: 19.

<<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>>.

<sup>12</sup> In contrast, a March 1998 Procurement Council report stated that out of 7,000 to 10,000 contracts, 76 protests were filed.

serves the State well to have an independent body review the protests. Engaging in review of bid protests prior to the Office of the State Comptroller's final determination mitigates the State's potential involvement in litigation. Protestors know they receive a fair and impartial review of their complaints.

## Legislative Role in Procurement Policy

The legislative process for establishing laws governing State procurement is important to ensure the efficiency of rules. Both the State Senate and Assembly have committees that draft legislation, seek input from interested parties through public hearings and other means, and advance bills for consideration by the full body of their respective houses. The Committee on Governmental Operations in the Assembly provides leadership on procurement issues; in the Senate, several committees play a role in procurement policy issues. In its 2004 Annual Report, the Assembly Committee on Governmental Operations identified improving the State's procurement process and strengthening existing laws promoting minority- and women-owned business enterprises as a priority for 2005.<sup>13</sup> The Committee, chaired by Assemblywoman RoAnn Destito, already has initiated hearings on these issues this year. In the Senate, the Task Force on Government Reform issued a report including recommendations for procurement reform, primarily in the area of procurement lobbying.<sup>14</sup>

The Legislature also plays an important role in promoting transparency in the procurement process, which furthers the goal of maximizing competition while achieving the best value for the State. The oversight function of the Legislature has resulted in a number of hearings and reports on particular procurement issues, as well as revisions to the law.<sup>15</sup>

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<sup>13</sup> "Annual Report - 2004." Committee on Governmental Operations. New York State Assembly. December 15, 2004.

<sup>14</sup> "Making Government Work." Senate Task Force on Government Reform. November 2004.

<sup>15</sup> For example, a New York State Assembly 2001 report, *Too Much, Too Little, Too Late*, documented a number of concerns with a 1996 Department of Social Services contract to create a Statewide Automated Child Welfare Information System. The purpose of the contract, which is known as Connections, is to create a system to track children receiving various child welfare services throughout the State. In fulfilling its oversight function, the Legislature also enacted changes in the Procurement Stewardship Act and raised certain procurement thresholds in the 2000 Session.



## ***Procurement Methods in New York State***

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The State Procurement Council provides a comprehensive explanation of New York's procurement process in its *Procurement Guidelines*. A State agency determines a need or problem situation and then begins the process to procure commodities, services or technology to address it. Early in the process, the agency must secure affirmation from the Division of the Budget regarding the necessary funding to procure the proposed contract. Once it is determined that funding is available, there is a continuum of procurement methods available to the agency: Preferred Sources, Office of General Services (OGS) Centralized Contracts, Discretionary Buying Thresholds, Competitive Procurements Using Invitations for Bids (IFBs) or Requests for Proposals (RFPs), Sole Source Procurements, Single Source Procurements and Emergency Procurements.<sup>16</sup>

### ***Preferred Source***

The State's procurement law prioritizes how agencies must go about purchasing. Generally, if the desired commodity or service is available from a Preferred Source and the price does not exceed 15 percent above the prevailing market rate (or above a reasonable fair market rate in the case of Correctional Industries), the agency must purchase from a Preferred Source.<sup>17</sup>

The "Preferred Source" status was developed in order to advance special social and economic goals; acquisitions from these providers are *not* subject to competitive procurement requirements. For commodities and services, priority is accorded qualified charitable agencies for the blind, qualified charitable agencies for other severely disabled persons, special employment programs for the mentally ill and veterans' workshops, while the Department of Correctional Services Industries Program (Corcraft) is also afforded priority for commodities.<sup>18</sup>

A State agency must specify its requirements for a service and notify those preferred sources that provide the service. If, within ten days, a Preferred Source does not express an interest in performing the service, the agency may conduct a competitive procurement.<sup>19</sup>

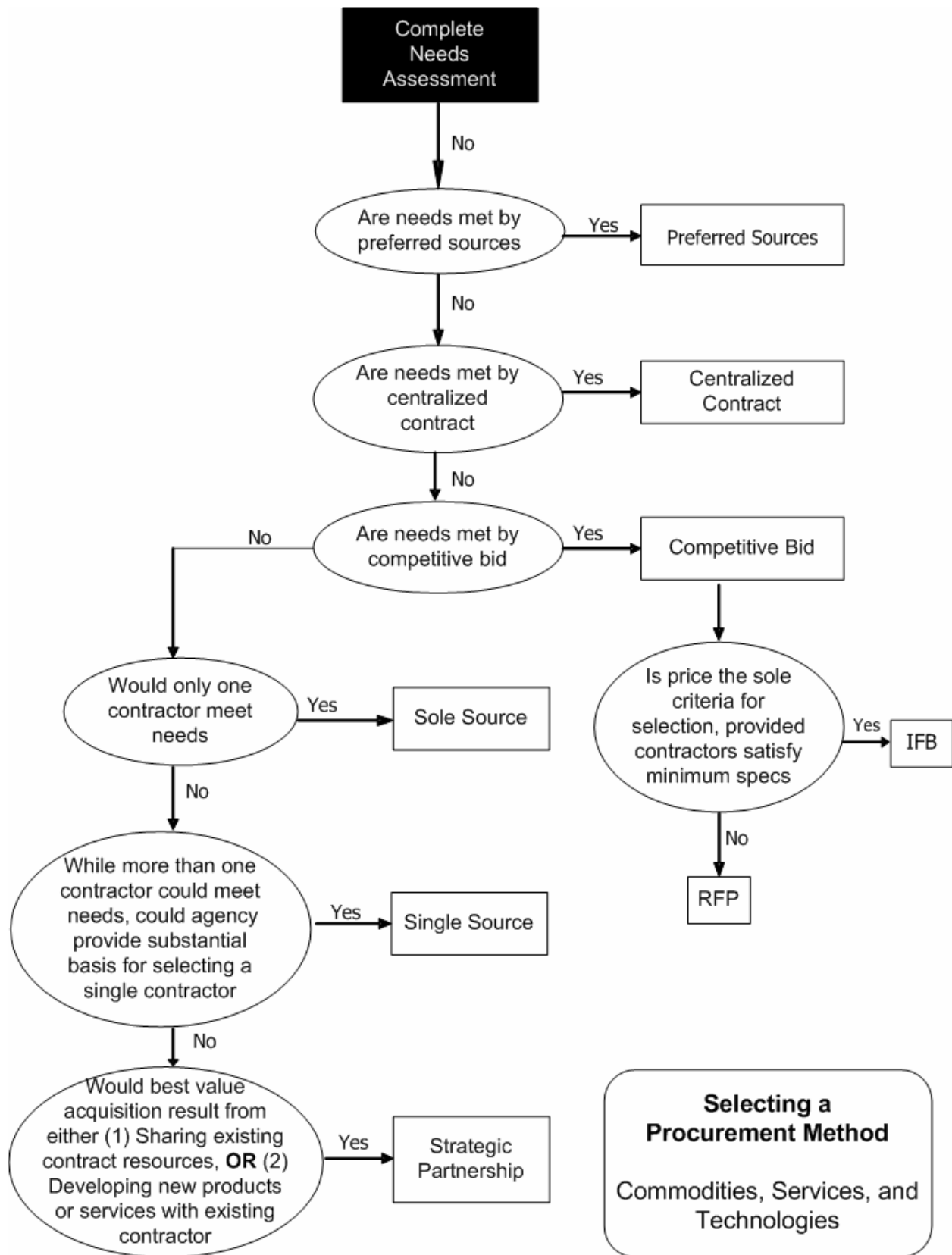
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<sup>16</sup> See the New York State Procurement Council's "Procurement Guidelines" for a complete discussion of the guidelines and process. <<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>>.

<sup>17</sup> "Procurement Guidelines." New York State Procurement Council, Section IV: 4. <<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>>. The standard applied is whether the commodity or service is available from a Preferred Source in the "form, function and utility" required by the State agency.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*: 5.



Note: "Procurement Guidelines." New York State Procurement Council. Section IV: 3. <http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>.

## **Centralized Contract**

When a need or problem situation is common to several agencies, commodities and services may be available through a contract offered by OGS. Centralized Commodity Contracts are established by the OGS Procurement Services Group (PSG) for a wide range of items commonly acquired by State agencies. The agency may, however, competitively procure items if the resultant price is less than that offered through the PSG contract.<sup>20</sup> Also when justified by price, State agencies may purchase from consortia instead of from the PSG contract. In addition, agencies may also request that OGS establish a commodity contract to meet a unique agency need.

The OGS contracts may be established on a statewide and regional basis, and they may be made with multiple vendors to allow purchasing flexibility while meeting user needs.

The OGS PSG also establishes centralized service and technology contracts for State agency use, most of which are provided *at the option* of agencies.<sup>21</sup> These contracts provide services ranging from routine maintenance to complex technology-based acquisitions that are available to agencies to use without an independent contracting process.<sup>22</sup>

## **Discretionary Buying Threshold**

Any procurement by an agency not exceeding the Discretionary Buying Threshold of \$15,000 may be handled without a formal competitive procurement. OGS has a higher Discretionary Buying Threshold: \$50,000. If an agency, however, purchases from small businesses or certified minority- and women-owned business enterprises (M/WBEs), or purchases recycled or remanufactured materials, the Discretionary Buying Threshold is \$50,000.<sup>23</sup> Purchases valued at \$15,000 or more must still be pre-audited by the Office of the State Comptroller; with regard to OGS contracts, the threshold for pre-audit by the Office of the State Comptroller is \$30,000.<sup>24</sup>

## **Competitive Procurements**

State agencies may procure a competitive contract with either an IFB or a RFP. If price is important and the commodity, service or technology can be translated into exact specifications, an IFB is likely to be most appropriate. A RFP is more appropriate as cost becomes less important as compared to other factors. For a RFP, an agency must establish evaluative criteria relating to quality, quantity, performance and cost; establish the relative importance of each criterion; and evaluate proposals, as well as award contracts, on the basis of these criteria. Regardless of which procurement tool is

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<sup>20</sup> This is known as the "OGS or Less" Guideline.

<sup>21</sup> The State Procurement Council may mandate the use of certain service and technology contracts where warranted.

<sup>22</sup> "Procurement Guidelines." New York State Procurement Council. Section IV: 6-7.

<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>.

<sup>23</sup> Minority- and women-owned business enterprises must be certified under Article 15-A of the Executive Law.

<sup>24</sup> "Procurement Guidelines." New York State Procurement Council. Section IV: 7-8.

<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>.

utilized, commodities are to be awarded on the basis of “lowest price” and services and technology contracts are to be awarded on the basis of “best value.”<sup>25</sup>

### ***Sole or Single Source***

In certain circumstances, a Sole Source or Single Source procurement may be necessary. The first step in either case is for the agency to develop a statement of work and/or scope, which defines the commodities, technology or services it is seeking to acquire. If only one vendor can supply the commodities, technology and/or perform the services required by the agency, a Sole Source procurement is necessary. If two or more vendors can supply the commodity, technology and/or services required, the agency may, under unusual circumstances and for material reasons, select one vendor over the others without a competitive process.<sup>26</sup>

### ***Emergency Contract***

An agency may award a procurement contract without complying with formal competitive bidding requirements where an emergency exists. An Emergency Procurement may be utilized only if health and public safety or the conservation of public resources is at risk.<sup>27</sup> When such a situation exists, a waiver of the competitive bidding requirements must be approved by the agency head or a designee. Approval by the Office of the State Comptroller of a waiver from advertising and bidding requirements is also required. The agency must document all transactions in the procurement record.<sup>28</sup>

### ***Contract Terms***

Contracts are generally approved for terms not exceeding five years; contract terms extending beyond five years must be justified.<sup>29</sup> The contract term can either be a straight five-year period or shorter periods with renewal option(s). Multi-year contracts or contracts with renewals generally contain escalation provisions based on a pre-determined index, such as the Consumer Price Index or the Producer Price Index. The use of multi-year contracts provides for continuity of service and reduces administrative requirements associated with re-bidding. While multi-year contracts are permitted, the intent of the operating principles of the Procurement Stewardship Act (PSA) to provide potential bidders opportunity to compete on State procurements must be upheld.

Office of the State Comptroller Bulletin G-197 outlines a process initiated in 2001 in an effort to reduce the processing time for renewals, as well as unnecessary paperwork. This streamlined renewal process provides that a contract is written for five

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<sup>25</sup> *Ibid.*: 8-9.

<sup>26</sup> *Ibid.*: 11-12.

<sup>27</sup> An agency's failure to properly plan in advance, which then results in a situation in which normal practices cannot be followed, does not constitute an emergency.

<sup>28</sup> *Ibid.*: 12.

<sup>29</sup> In 1994, for example, the Department of Taxation and Finance justified its need for a ten-year contract with Fleet Bank to process certain income tax returns. In this case, Fleet Bank was making a significant investment in the system with a capital investment that warranted a long-term contract, which the Office of the State Comptroller approved.

years with an allowance for annual termination after an initial period. This process eliminates the need to annually submit a contract document to the Office of the State Comptroller that is required for renewing fixed contracts with renewal options (e.g., three years with one or more annual renewals). In order to take advantage of this streamlined renewal process, however, an agency must be able to reasonably predict the total contract amount (the original term plus renewals). Should there be a change in contract amount or a substantial change in contract scope, the agency must submit a contract amendment to the Office of the State Comptroller before the change can be made. Since the value of competition in obtaining the best value for the State is paramount, a new procurement may be necessary if the scope of the contract has increased.



## ***New York State Incentive Programs***

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New York State has made it possible for State agencies to utilize discretionary purchasing thresholds when purchasing from minority- and women-owned business enterprises (M/WBEs), resident small businesses and when purchasing commodities or technology that are recycled or remanufactured. This discretionary buying threshold eliminates the need to procure through a formal competitive bidding process when making purchases of \$50,000 or less, as long as the transaction is reasonable.

Collectively known as the New York State Small Business Initiative (NYSSBI), this program was established in the Procurement Stewardship Act (PSA) to “promote special social and economic goals for these special business concerns, and in order to simplify the process for agencies as well as these special business concerns...”<sup>30</sup> The program addresses a number of objectives, including streamlining the process by which State agencies may exercise their discretionary purchase levels, providing procurement opportunities for often competitively disadvantaged businesses, and offering State agencies a broader choice of products and services. Statements in support of the statutory change assert that the “[i]nclusion of small businesses and minority- and women-owned enterprises on lists and making such lists available to all authorized purchasers should enhance the number and types of procurement opportunities for such business entities.”<sup>31</sup>

Chapter 95 of the Laws of 2000 amended the PSA, adding a provision that defined “small business.” According to Section 160(8) of the State Finance Law, a small business is a “business which is operated in this state, independently owned and operated, not dominant in its field and employs 100 or less persons.”

Chapter 95 also defined “recycled,” “remanufactured” and “recycled commodity,” and requires the State agencies to “purchase recycled, remanufactured or recyclable commodities when such commodities meet their form, function, and utility.”<sup>32</sup> In support of the provision, the point was made that it is estimated that the remanufacturing industry employs thousands of people in the State, while simultaneously preventing significant tonnage of solid waste from entering the landfills.<sup>33</sup>

As a result of the PSA, the discretionary buying threshold for State agencies was set at \$50,000 when purchasing commodities or services from a New York State small business, firms certified as a M/WBE by the Department of Economic Development, or for purchases of commodities or technology that are recycled or remanufactured. The State further requires that contracts of \$25,000 or more contain a clause stating the goals for subcontracting with M/WBEs.

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<sup>30</sup> Memorandum in support of Chapter 95 of the Laws of 2000.

<sup>31</sup> *Ibid.*

<sup>32</sup> Section 165(3)(b) of the State Finance Law as added by Chapter 95, Laws of 2000.

<sup>33</sup> New York State Assembly Memorandum of Support for A-6984-D/S-3857-D, March 17, 1999.

In 2002, the New York City Council commissioned a \$1 million disparity study to determine if the City's practice of awarding contracts discriminated against M/WBEs. The study, released in January 2005, confirmed what many had suspected—there was widespread racial and gender disparities in the manner in which the City awarded \$9 billion in contracts annually. The disparity study reviewed nearly 137,000 contracts awarded between July 1997 and June 2002 worth \$18.8 billion. Of that total, Caucasian male contractors received \$16.7 billion of the contracts, or more than 88 percent.<sup>34</sup> In the construction category, the largest of the five categories examined in the study, Caucasian males received nearly \$5.2 billion, or 85.9 percent, of the \$6 billion spent.<sup>35</sup> Caucasian men accounted for 90 percent of the \$4.5 billion in contracts awarded in Standard Services category and 89 percent of the \$3.6 billion in contracts awarded in the Professional Services category.<sup>36</sup>

Through the completion of the study, the City concluded that it had obtained “both the statistical findings and the legal basis to support race and gender conscious and race and gender neutral programs” and offered a number of recommendations for effecting improvements and enhancements to its business enterprise policies and programs.<sup>37</sup>

The New York City disparity study was undertaken as a result of the landmark case of *City of Richmond vs. J.A. Croson Company (Croson)*, in which the Supreme Court ruled that Richmond's affirmative action program was unconstitutional because it violated the equal protection clause of the 14<sup>th</sup> Amendment of the Constitution. As a result of the Court's ruling in *Croson*, state and local governments that propose voluntary affirmative action plans must now first complete a disparity study to establish the extent of existing discrimination and narrowly focus contracting policies to accomplish remedial efforts.

In 1988, New York State enacted Article 15-A of the Executive Law to promote equality of economic opportunity for M/WBEs and to eradicate barriers to their participation in State contracting opportunities. As the authorization for establishing an M/WBE program is contained in the Executive Law, any decision as to the performance of a State disparity study rests with the Executive Department.

While minorities and women have made tremendous progress over the past few decades in gaining economic equality, race and gender-based discrimination continues to present barriers to full equality. African Americans, Hispanic Americans and women currently fall well short of achieving the business success attained by the white male segment of the population. Minorities and women are less likely to own businesses than are white males, and the businesses they do own generate far lower sales.<sup>38</sup>

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<sup>34</sup> Lombardi, Frank. “See City Bias in Contracts.” *Daily News*. January 26, 2005: 4.

<sup>35</sup> “The New York City MBE/WBE Disparity Study.” Mason Tillman Associates, Ltd. January 2005: 3-7. <[http://www.nycouncil.info/pdf\\_files/reports/citynyrpt.pdf](http://www.nycouncil.info/pdf_files/reports/citynyrpt.pdf)>.

<sup>36</sup> *Ibid*: 3-13, 3-11. The study analyzed prime contracts in the categories of Construction, Architecture and Engineering, Professional Services, Standard Services, and Goods.

<sup>37</sup> *Ibid*: 10-21.

<sup>38</sup> Lerman, Robert I., Caroline Ratcliffe, Harold Salzman, Douglas A. Wissoker and Jennifer Gaudet. “Can Expanding the Use of Computers Improve the Performance of Small Minority-and Women-Owned Enterprises?” Urban Institute. March 17, 2004. <[http://www.urban.org/UploadedPDF/310971\\_Computers.pdf](http://www.urban.org/UploadedPDF/310971_Computers.pdf)>.

New York State contracts for billions of dollars of goods and services annually. Article 15-A of the Executive Law created the Division of Minority and Women's Business Development first within the Governor's Office, but later transferred to the Department of Economic Development (DED) in 1992. The law and regulations require:

- The inclusion of equal opportunity/non-discrimination clause in all State contracts,
- Rules and regulations to ensure that M/WBEs are awarded a fair share of contracts,
- Provision for contractors on large projects to seek participation by sub-contractor M/WBEs (specific goals and plans for each contract),
- Certification process for M/WBEs,
- Annual plans from contracting agencies, quarterly progress reports from agencies and an annual report from DED to the governor and legislature,
- Good faith efforts on the part of agencies and contractors, and
- Oversight, monitoring, waiver processes and an appeal process.



## ***Procurement Integrity Issues***

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Although New York has had its share of contract scandals, none have illustrated broad based system failures as in neighboring states. New York currently has a contract review process conducted by the Office of the State Comptroller that serves as a solid deterrent to fraud, corruption, and extravagant or improvident purchases of goods or services. In fact, New York's "[c]ontracting and purchasing processes are far more rational and professional than in a majority of states around the country," according to *Governing, the Magazine of States and Localities*. In *Governing's* 2005 report card on government performance, the effective management of contracting and purchasing was singled out as New York's strength.<sup>39</sup>

One measure of the effectiveness of the Procurement Stewardship Act (PSA) is the relatively low number of legal challenges to the contracts awarded since 1995. The legal decisions interpreting the requirements of the PSA that have occurred shed light on the principles underlying the enactment of the PSA.

In a 1997 decision addressing the first major legal challenge to a procurement conducted under the PSA, the Appellate Division Third Department reiterated the central purposes of New York's competitive bidding statutes: "(1) the protection of the public fisc by obtaining the best work at the lowest possible price; and (2) prevention of favoritism, improvidence, fraud and corruption in the awarding of public contracts." The Court rejected a challenge to the procurement conducted by the Department of Social Services to develop an electronic benefits transfer system for welfare recipients after concluding that no favoritism, fraud or corruption was present and that there was no material or substantial irregularity in the bidding process, which undermined the fairness of the competition.<sup>40</sup>

In a subsequent decision, the Appellate Division Third Department stated that in accordance with the requirements of the PSA, the State's procurement policy is to be guided by various principles, including promoting purchasing from responsive and responsible offerers, ensuring that contracts are awarded consistent with the best interest of the State.<sup>41</sup>

### **Procurement Rules in Other States**

- Most states, including New York, allow the agency or department head or director to make decisions regarding contracts that do not require a formal bidding process.

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<sup>39</sup> "Grading the States 2005." *Governing, the Magazine of States* 18.5 (February 2005): 75.

<sup>40</sup> *Matter of Transactive Corporation v. New York State Department of Social Services, et. al; Matter of Check Cashers Association of New York, Inc., et al. v. New York State Department of Social Services, et al.*, 236 AD 2<sup>nd</sup> 48 (Third Dept., 1997), affirmed on other grounds 92 NY 2<sup>nd</sup> 579 (1998).

<sup>41</sup> *Matter of Adelaide Environmental Health Associates, Inc. v. State of New York Office of General Services*, 248 AD 2d 861 (Third Dept., 1998).

- Managers are allowed to make purchases without additional approval in 43 states, although a dollar limit is placed on this authority by 35 of those states. The specific dollar limit, however, varies from state to state.<sup>42</sup>
- The majority of states require competitively-bid contracts, and most of those states have implemented a \$25,000 threshold. A few states, as in the case of Washington with a \$250,000 threshold, have very liberal thresholds.
  - A few states, including New York, use best value, not just low bid price, as criteria for competitively bid contract awards.
  - New York is one of a few states that allows vendors to suggest solutions to the problems put forth by states.
- Although many states have a central state office that approves certain contracts, the independent review and approval of contracts by an independent body appears to be unique to New York.
- Oversight responsibility for monitoring contracts is held only by the contracting agency in eight states. Forty states place authority to monitor contracts with both the agency and the central state office. In New York, the procuring entity is responsible for contract oversight.
- A total of 41 states formally track contractor performance and require performance guarantees; New York does not.
- E-procurement methods have been initiated in 14 states, and 12 other states are beginning the process.<sup>43</sup> New York has not initiated a statewide e-procurement strategy for State contracts.<sup>44</sup>

## Procurement Scandals in Other States

Connecticut, New Jersey and Maryland, recently mired in negative publicity regarding lax procurement regulations, have fallen victim to a host of scandals, including pay-to-play schemes. Pay-to-play refers to the unethical practice of exchanging campaign contributions for favorable consideration in the state contract process. Insufficient procurement oversight seems to have created an atmosphere in which vendors could pay-to-play in the contracting process in these states.

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<sup>42</sup> The threshold on purchases not requiring a formal bid is highest in Oregon and Vermont (\$75,000).

<sup>43</sup> Information pertaining to states other than New York is based on a project sponsored by the Pew Charitable Trusts in which 48 states participated. Bartle, John R. and Ronnie LaCourse Korosec. "Procurement and Contracting in State Government, 2000." Published by *The Government Performance Project* through Syracuse University and *Governing Magazine*. July 2001. <<http://www.maxwell.syr.edu/gpp/>>.

<sup>44</sup> Section 103(1) of the General Municipal Law authorized local governments to accept electronic bids under certain circumstances. This authorization is scheduled to expire June 1, 2008.

Connecticut's Governor John Rowland resigned last year during an impeachment inquiry and federal investigation into contract steering under his tenure.<sup>45</sup> State authorities also found that state contractors performed free work on some state workers' houses.<sup>46</sup> In addition, the Chief State's Attorney in Connecticut is examining whether contractors who worked on the Stamford Mayor's house were awarded special deals from the city.<sup>47</sup> Federal prosecutors in New Jersey investigated influence-peddling in former Governor James McGreevey's administration. Charges of misconduct in new government contracts are common in New Jersey, partly because about 20 percent of campaign donations received by the political party in power over the last election cycle were given by government contractors.<sup>48</sup> In Maryland, Governor Robert Ehrlich Jr. entered into a secret agreement with a prominent developer who sought to purchase state preservation land, resulting in a tax-break of as much as \$7 million.<sup>49</sup>

### **Connecticut**

Connecticut's procurement practices are characterized less by what they entail than by what they do not. A report to the Governor by the State Contracting Reform Task Force, established as a direct result of scandal, states that:

The Connecticut General Statutes mandate differing degrees of rules, regulations, standards, and oversight for the various state agencies, offices, institutions, committees, and municipalities that have the statutory responsibility for bidding and selections, and the resulting contracts. In addition, various state agencies have procedures that have evolved over the years and are often not set forth in statutes or regulations. Consequently, there are no universal minimum statutory requirements applicable to all contracting entities across the state for the following processes and procedures: contract solicitations, consultant and contractor selection, contract oversight, bidding and awards, appeal processes and process turn around time duration.<sup>50</sup>

Because Connecticut lacks a central oversight board or agency, procurement regulations and outcomes are difficult to ascertain, much less enforce. Though procurement operations are supposed to be controlled through the Department of Administrative services, the task force recommended various changes to address numerous deficiencies in Connecticut's procurement process.

In February 2005, the Joint Government Administration and Elections Committee in the Connecticut legislature voted in favor of a purchasing bill, which contained state

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<sup>45</sup> "Tough Ethics Laws Urged." *The Hartford Courant*. September 1, 2004: B5.

<sup>46</sup> Apuzzo, Matt. "DEP Workers Made Thousands Off Contractor." *The Associated Press State & Local Wire*. October 7, 2004.

<sup>47</sup> Cowan, Alison Leigh. "Inquiry Into City Contracts Puts Crimp in Stamford Mayor's Campaign for Governor." *The New York Times*. December 3, 2004; "Setting the Record Straight." *Hartford Courant*. March 3, 2005: A4.

<sup>48</sup> Pingree, Chellie and Craig Holman. "Legislature Must Follow McGreevy on Pay-to-Play." *Asbury Park Press*. October 1, 2004.

<sup>49</sup> Nitkin, David. "Ehrlich OK'd Deal for Land." *Baltimore Sun*. October 20, 2004.

<sup>50</sup> State Contracting Reform Task Force. *Final Report*. Connecticut. September 1, 2004: 11.

contracting reform recommendations based on the Task Force's report. If enacted, the bill would create an independent State Contracting Standards Board responsible for reviewing contracts in excess of a certain dollar amount, provide for the termination or suspension of contracts that do not meet the rules of the new code and disqualify contractors if they have been convicted of certain crimes. Other parts of the bill would require contracts for legal services worth \$250,000 or more to go through a competitive process, prohibit the state from contracting with any company that received a tax benefit for reincorporating outside the U.S. and allow bidders to contest the award of state contracts. The bill needs approval from at least four other legislative committees before it reaches the full House and Senate, and eventually the governor for final action.<sup>51</sup>

## ***New Jersey***

The Division of Purchase and Property, part of the Department of the Treasury, is designated to act as the central procurement agency for the State of New Jersey.<sup>52</sup> Although the Contract Compliance and Administration Unit ensures that agencies comply with State procurement regulations and that vendors comply with their contractual agreements, a number of problems have been profiled in the media in recent years.<sup>53</sup> For example, a former high-level official in New Jersey's Commerce Department resigned after being indicted on charges of theft and misappropriation of public property in December 2004. The official is charged not only with contracting work to relatives, but also with falsifying official documents.<sup>54</sup> In September 2004, a fundraiser for the Democratic Party pled guilty to accusations that he promised a farmer millions of dollars in government land preservation funds in return for a \$40,000 campaign contribution.<sup>55</sup>

In response to such procurement scandals plaguing the state, New Jersey political leaders have begun taking steps to reform the state's purchasing processes. In September 2004, shortly before resigning, then Governor James E. McGreevey issued an executive order intended to eliminate connections that often exist between political contributions and government contracts. The order, which took effect October 15, 2004, prohibits the awarding of state contracts worth more than \$17,500 to businesses that have contributed to a gubernatorial candidate or a political party committee within the past 18 months.<sup>56</sup>

Governor McGreevey's successor, Richard Codey, signed legislation codifying this executive order into law in March 2005. The new law, however, exempts highway construction companies (some of the biggest campaign contributors) that bid on state transportation contracts involving federal funds. This exemption was necessary in order

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<sup>51</sup> Haigh, Susan. *Legislative Panel Approves Contracting Reform Bill.* *The Associated Press State & Local Wire.* March 1, 2005.

<sup>52</sup> <<http://www.state.nj.us/treasury/purchase/>>.

<sup>53</sup> *Ibid.*

<sup>54</sup> Benson, Josh. "Ex-Government Aide and Two Relatives Charged in Inquiry." *The New York Times.* December 7, 2004.

<sup>55</sup> Caruso, David B. "Federal Prosecutors Take Aim at 'Pay to Play' politics." *The Associated Press State and Local Wire.* October 6, 2004.

<sup>56</sup> Mansnerus, Lara. "New Jersey Bars Contract for Political Donors." *The New York Times.* September 23, 2004.

for New Jersey to continue receiving federal transportation aid due to a ruling by the Federal Highway Transportation Administration.<sup>57</sup>

Acting Governor Cody has also introduced several other ethics measures. One proposed bill would allow local governments to pass pay-to-play ordinances that are stronger than state law and another would freeze campaign contribution limits at current levels.<sup>58</sup> An executive order, signed on December 6, 2004, broadens the state's ban on contingent retainers for lobbyists seeking to influence legislation by prohibiting lobbyists from earning contingency fees by procuring bond contracts.<sup>59</sup>

During an investigation of New Jersey's E-ZPass procurement, the State of New Jersey Commission of Investigation found myriad procurement problems, as well as malfeasance. The Commission's recommendations indicate that the State's procurement procedures are insufficient.

Seeking to prevent future mistakes similar to those made during the E-ZPass debacle, two Democratic New Jersey Senators introduced a bill in December 2004 that would reform state purchasing procedures. The bill would restrict instances in which the bidding process could be bypassed, require that project assessors have relevant experience in the field in which the contract is being awarded and mandate record keeping by state officials dealing with potential contractors. In addition, the bill would ban members of contract evaluation committees from having family ties, personal interest or financial links to potential vendors.<sup>60</sup>

## **Maryland**

Maryland's procurement responsibilities are held primarily by the Department of General Services' (DGS) Procurement and Logistics Division. Its website states:

The Department's procurement office provides professional and technical support services to State and local government agencies; conducts central procurement of architectural and engineering services, commodities, construction, facilities maintenance, and printing services. The professional procurement staff performs specialized contracting, bid/proposal administration, and bid security for all State government users except the University System of Maryland. The Technology unit administers Internet-based eMaryland Marketplace, a full-service interactive procurement system.<sup>61</sup>

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<sup>57</sup> Cataldo, Adam L. "N.J. Governor Signs Bill Banning Pay-to-Play Into Law." *The Bond Buyer Online*. March 23, 2005; "Codey Revises Executive Order Banning 'Pay to Play.'" *The Associated Press & Local Wire*. January 26, 2005.

<sup>58</sup> O'Brien, Tim. "Codey Reins in Bond Matchmakers, Prohibiting Contingency Fees; Executive Order is Latest in His String of Moves to Push Ethics Reform." *New Jersey Law Journal*. December 13, 2004.

<sup>59</sup> *Ibid*; Smothers, Ronald. "Order Bans Fees for Consultants of Underwriters Seeking Business with New Jersey." *The New York Times*. December 7, 2004.

<sup>60</sup> "News in Brief from Around the Statehouse." *The Associated Press State & Local Wire*. December 22, 2004.

<sup>61</sup> <<http://www.dgs.maryland.gov/overview/logistics.htm>>.

The Procurement and Logistics Division is responsible for oversight of the Minority Business Enterprise Office (MBE), as well as several other offices related to inventory, printing and records management.<sup>62</sup> In addition, under the authorization of Article 95 and the State Finance and Procurement Article, Annotated Code of Maryland, the Administration Division of the State of Maryland Treasurer's Office is responsible for procuring all banking, investment, insurance and other financial services contracts.<sup>63</sup> It also provides centralized procurement for equipment, supplies and services, telecommunications, including telephones, pagers and cell phones, travel arrangements, fleet management, surplus property, and inventory control and management.<sup>64</sup> Neither website indicates that the agencies are responsible for oversight of all state contracting and procurement, begging the question of what entity, if any, is responsible for ensuring oversight during the process.

Absent a well-defined oversight process, Maryland's government has witnessed a rash of procurement scandals in recent months. Following a tip to the state employee fraud hot line, state auditors found irregularities in the State Highway Administration's (SHA) purchasing practices. Questionable transactions included awarding a \$750,000 contract to each of three companies that were not among the top candidates, including a company where the wife of a SHA manager was employed.<sup>65</sup> Another SHA manager was investigated for awarding \$190,000 in projects to a single contractor in 2003 without written contracts.<sup>66</sup> Moreover, the SHA, along with two other state agencies, was found to have purchased \$1.4 million of goods at inflated prices from 17 suppliers. Five of nine SHA employees associated with the purchases were fired, and one was charged with accepting bribes from a vendor.<sup>67</sup> Staff at a Maryland University also allegedly violated purchasing guidelines by engaging in improper email and telephone conversations with a potential advertising contractor and then recommending the selection of that contractor to the Board of Public Works.<sup>68</sup>

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<sup>62</sup> *Ibid.*

<sup>63</sup> <<http://www.treasurer.state.md.us/administration.htm>>.

<sup>64</sup> *Ibid.*

<sup>65</sup> Dresser, Michael. "More SHA Contracts Fall Under Suspicion; Legislative Audit Reveals \$190,000 in Unwritten Pacts Awarded by Shop Manager." *The Baltimore Sun*. December 11, 2004.

<sup>66</sup> *Ibid.*

<sup>67</sup> Daemmrich, JoAnna. "Second Fired State Worker Charged with Taking Bribes; Woman Accused of Buying Vastly Overpriced Supplies." *The Baltimore Sun*. March 3, 2005.

<sup>68</sup> Kridler, Kara. "Baltimore-Based Eisner Communication Protests U of MD University College Ad Pact." *The Daily Record* (Baltimore, MD). November 18, 2004.

# ***Efforts to Improve Procurement Practices in New York State***

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Although a number of challenges remain in New York's procurement process, the Comptroller has implemented several measures to assist agencies in conducting fair and successful procurements, and to help vendors compete for State contracts.<sup>69</sup> In addition, other State officials have initiated efforts to enhance procurement integrity.

## **Office of the State Comptroller**

The Office of the State Comptroller provides technical assistance for State agency procurements in the following ways:

- Provide customized training as requested to agency staff on topics such as Requests for Proposals (RFPs), Grants to Not-for-Profits, Invitations for Bids (IFBs), the Procurement Stewardship Act and Pitfalls in Procurement.
- Review draft RFPs and Requests for Applications (RFAs), and associated evaluation tools.
- Provide technical assistance on specific procurement and contract questions.
- Provide technical assistance on Bureau of Contracts policies and procedures, including interaction with the Centralized Accounting System.
- Issue guidelines to State agencies on procurement practices.

The Office of the State Comptroller technical assistance training in all aspects of procurement has become increasingly important as State agencies lose experienced talent and institutional knowledge due to retirements.

The numbers of staff trained in procurement by the Office of the State Comptroller continue to increase each year. From April 2004 to January 2005 by investing 6,732 training hours, the Office of the State Comptroller accommodated requests for training from more than 15 agencies and trained 1,970 agency staff.

Bureau of Contracts staff also provides technical assistance to agencies by reviewing the RFP and evaluation documents before the solicitation document is issued. At the agency's request, Contracts staff will evaluate an application's effectiveness and accuracy according to State Finance Law. By investing time up front in the process, the Bureau of Contracts is able to decrease the review and approval time once the contract award is submitted and help to avoid a flawed procurement.

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<sup>69</sup> See Appendix A for examples of specific assistance the Office of the State Comptroller has provided to agencies.

The Office of the State Comptroller also provides technical assistance on contracts funded by grants. Grants are “program contracts,” usually multi-contracts. In other words, a number of contracts will generally be awarded from one RFP or Request for Applications (RFA). The contract is actually furthering the procuring agency’s mission. It is usually for human service programs, which provide for the State’s most vulnerable individuals, and the contract is often with a not-for-profit agency. To facilitate successful grant awards, the Office of the State Comptroller will review a RFP instrument, provide advice on how to set up contracts or go out to an agency to provide specific training. In May 2004, the Office of the State Comptroller provided training on contracts funded by grants for 80 employees from various agencies.

The Office of the State Comptroller provides a variety of information related to Vendor Responsibility on its website.<sup>70</sup> Procurement laws and guidelines require the award of State contracts to responsible vendors, generally meaning that a vendor has the integrity to justify the award of public dollars, as well as the capacity to fully perform the requirements of the contract. It is a contracting agency’s responsibility to evaluate the responsibility of a prospective contractor.<sup>71</sup>

In 2004, the Office of the State Comptroller initiated outreach efforts with agencies, the vendor community and not-for-profit organizations to formalize responsibility determinations. On November 1, 2004, the Office of the State Comptroller issued a bulletin detailing agency requirements and setting forth a new procedure under which an affirmative responsibility determination must be submitted to the Office of the State Comptroller with a proposed contract. The bulletin and procedure went into effect January 1, 2005. The Office of the State Comptroller website provides resources regarding standards, procedures and documentation requirements for determination of vendor responsibility.

The Division of Local Government Services and Economic Development (Local Governments) within the Comptroller’s Office has sponsored or co-sponsored a number of teleconferences and training sessions for local government personnel on procurement cost-saving practices, internal controls and fiscal accountability. The Division of Legal Services, also within the Office of the State Comptroller, regularly provides staff to conduct training for local officials on the procurement requirements of the General Municipal Law. As a proactive step to improve fiscal accountability, the Office of the State Comptroller co-sponsored a series of four satellite teleconferences in Fall 2004. Along with the State Association of Municipal Purchasing Officials and the National Institute of Government Purchasing, the Office of the State Comptroller designed one of the teleconferences in an effort to educate local officials involved in purchasing on ways to save money. The informational series included such topics as centralized purchasing, cooperative purchasing, regional purchasing groups, maintenance agreements, contract administration, the advantages associated with buying or leasing, negotiating prices, and avoiding bid protests and legal actions.

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<sup>70</sup> < <http://nysosc3.osc.state.ny.us/vendrep/index.htm> >.

<sup>71</sup> Section 163(9)(f) of the State Finance Law requires agencies to make a determination of responsibility of the proposed contractor.

## ***Directory of Frequently Purchased Commodities and Services by New York State Agencies***

In January 2005, the Office of the State Comptroller produced the fifteenth edition of the *Directory of Frequently Purchased Commodities and Services by New York State Agencies*. The initial purpose of publishing the Directory was to compile information in a central location and to encourage interest in promoting the participation of minority- and women-owned business enterprises (M/WBEs). The Office of the State Comptroller continues to make the Directory widely available as part of its outreach efforts at annual events held by organizations such as the Federation of Hispanic Chambers of Commerce, the Black and Puerto Rican Legislative Caucus, and Somos El Futuro, as well as at the African American Family Day and Interagency Black History Month Celebration. The Office of the State Comptroller is also planning to expand these outreach efforts to events hosted by other minority groups in the near future and make the Directory available on its website.

In the past, the Office of the State Comptroller relied on a survey in which agencies indicated the types of purchases they had made. This year's statewide Directory includes actual expenditure data for purchases made by agencies for various services, supplies, commodities and equipment during fiscal year ending 2004. With this improved Directory, M/WBEs will know where to look for business opportunities. The Office of the State Comptroller will continue to update this information on an annual basis and take additional steps to promote fair and open procurements in New York State.<sup>72</sup>

### ***Post-Award Investigations and Audits***

Not only does the Office of the State Comptroller strive to protect the integrity of procurements through its outreach to agencies and its monitoring of the process, but the Division of Investigations (Division) within the Comptroller's Office also actively investigates complaints of abuse or impropriety regarding State agency contracts. Conditions that may have affected the final determination on a contract, but were hidden during the review process, are then investigated. This process, in which the Comptroller strives to uphold the highest standards of integrity in government, has resulted in the cancellation of a number of contracts.

For example, the Office of the State Comptroller discovered that Olympia Construction had been debarred for allegedly bribing federal building inspectors. Following this revelation, in 2004, the Office of General Services re-inspected all work that had already been completed by Olympia and removed the company from the approved contractor list.<sup>73</sup>

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<sup>72</sup> New York State Office of the State Comptroller, *Directory of Frequently Purchased Commodities and Services by New York State Agencies*, Fifteenth Edition, January 2005.

<sup>73</sup> The Office of General Services did not discover the information at the time of the contract award because Olympia had lied on a questionnaire.

The Division currently has a number of open investigations concerning potential fraud, generally focused on bid rigging or kickback schemes, and works closely with law enforcement organizations in its efforts to uncover and document financial improprieties.

The State Comptroller also conducts audits on a risk-based approach to ensure that the terms and conditions of contracts are being met. Even the most detailed audit, however, is not a guarantee of protection against fraud and mismanagement. Only a review of the procurement process, review of the contract itself and measures to improve fiscal accountability will help assure that tax dollars are spent and accounted for appropriately. Although some remaining issues in the procurement process need to be addressed, the Procurement Stewardship Act sets the standards for the Office of the State Comptroller to apply in its review of State agency contracts.

## **Governor's Executive Order 127**

In June 2003, Governor Pataki issued Executive Order (EO) 127, requiring State agencies, public benefit corporations, public authorities and commissions to collect and record certain information from contractors seeking "procurements" in excess of \$15,000, and to make the information available to the public. Certain types of contracts, however, are exempt from EO 127. Procurement contracts that by law must be awarded to the lowest responsible bidder or on the basis of lowest price subsequent to a competitive bid process, as well as Back-drop contracts where vendors are pre-qualified, are exempt.

All State agencies, and public benefit corporations, public authorities or commissions with at least one gubernatorial appointee, the State University of New York and the City University of New York are subject to EO 127. Executive Order 127 also requires the public entity to consider whether a contractor has intentionally provided false or incomplete information under this order within the last five years as the entity makes its determination of vendor responsibility. Unlike a statute, however, an executive order directs the action of State agencies and authorities. It does not have the force and effect of law. While an action of good intention, there has been no reporting of compliance with EO 127.<sup>74</sup>

## **Legislation to Restrict Procurement Lobbying**

Procurement lobbying bills have been introduced in the Senate and Assembly. In addition, the State Lobbying Commission, the Governor and the Attorney General have proposed reforms. The public authority reform bills introduced in 2005 also address procurement lobbying, with the Comptroller and Attorney General's Public Authority Reform Act being the most comprehensive. The Public Authority Reform Act includes provisions of Assembly Bill A0009, sponsored by Assembly Speaker Silver and developed with assistance of the Assembly Committee on Governmental Operations

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<sup>74</sup> See Appendix C for an Executive Order issued by the State Comptroller to regulate procurement lobbying directed at the Office of the State Comptroller.

chaired by Assembly Member RoAnn Destito. This bill passed the Assembly in early March 2004.

Proposed legislative changes regulate procurement lobbying in two important ways: by requiring disclosure of attempts to influence legislation and, secondly, by restricting contacts with agency officials once a procurement is underway. A similar approach is recommended in legislation proposed by the Governor on March 10, 2005 as part of a package of reforms intended to limit the influence of lobbyists.



# ***Opportunities to Improve New York's Procurement Practices***

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As the financial implications of procurement activity continue to increase, so do the challenges to modernize and reform the process, while simultaneously ensuring the highest standards of integrity. It is in the State's best interest to seek out opportunities to streamline the procurement process and effectively reduce bureaucratic red tape. The implementation of flexible and inclusive policies can accomplish those goals. Improvements to the procurement process, whether implemented administratively or through the legislative process, are essential in keeping the system responsive to the needs of government.

The Procurement Stewardship Act (PSA), which provides a comprehensive framework for competitive procedures relative to public contracting, was set to expire in 2005 but, as part of the 2005-06 budget legislation, was extended until 2006. This extension should promote a thorough legislative review of related issues, resulting in amendments to improve the Act's effectiveness.

It is both imperative and judicious that the State consider additional measures that contribute to the efficiency of government procurement processes. Other legislative action, affecting timely enhancements of State statutes regarding purchasing, can provide significant and immediate improvements to the process. The following recommended actions would improve the State's procurement practices, addressing the dynamic nature of the process.

## **I. Discretionary Thresholds Reform**

An increase in discretionary thresholds is one of the most important ways the procurement process can be made more effective. Adjustments to the discretionary thresholds for State and local contracts, as well as those aimed at increasing the participation of minority- and women-owned businesses would result in greater flexibility, lower administrative costs and a more efficient utilization of staff resources.

### ***State Contracts***

Thresholds for State contracts were last increased in 2000 to the current level of \$15,000 for prior approval by the Office of the State Comptroller and for discretionary purchasing. Raising thresholds allows agencies greater flexibility in making relatively small dollar purchases. By reducing the level of scrutiny spent on smaller dollar purchases, the State's day-to-day operations become more efficient since the scrutiny is focused on large contracts with increased potential for waste and fraud. Safeguards, ensuring the propriety of smaller dollar contracts, are maintained through the post-audit function and review of payments function of the Office of the State Comptroller.

The Comptroller recommends an increase in the competitive bidding and pre-approval thresholds from \$15,000 to \$50,000. Contracts valued between \$15,000 and \$50,000 represent 23 percent of new procurements reviewed by the Office of the State Comptroller annually, but only about 1 percent of the total dollar value of the resulting contracts. It follows that a similar percentage of State agency resources are dedicated to formal competitive processes that result in contracts with low dollar values and relatively low risks.

The Comptroller recommends the \$15,000 advertising threshold be maintained at the current level.<sup>75</sup> This threshold will continue to promote transparency in the process and ensure the widest opportunities for all.

The Comptroller also recommends no change in the current \$10,000 threshold for contract approval by the Office of the State Comptroller in instances where the State agrees to give consideration other than the payment of money (revenue contracts and agreements where cash is not the means of exchange). In these instances, it is essential the State retain a lower threshold to ensure it maximizes the amount of revenue it receives as a result of the contract.

### ***Local Governments***

Discretionary dollar thresholds for competitive bidding by local governments were established in Section 103 of the General Municipal Law (GML). Though the original legislative intent was to exempt smaller purchases and lower value public works contracts from competitive bidding, current thresholds have been in effect since 1991 and have not kept pace with inflation. Local governments will benefit from both added purchasing flexibility and lower administrative expenses resulting from less formal procurement procedures.

Audits of local governments and procurement policies and procedures required under the GML would serve to mitigate any risk of inappropriate small dollar procurements as a result of increased thresholds. The establishment in statute of a provision banning artificially split procurements in avoidance of the dollar thresholds would further mitigate potential risks.

It is recommended that the threshold for purchase contracts bidding be increased from \$10,000 to \$20,000, and that the threshold for the bidding of public work contracts be increased from \$20,000 to \$50,000.

### ***Minority- and Women-Owned Business Enterprises, Small Businesses and Recycled/Remanufactured Goods***

Providing opportunities to small businesses and M/WBEs can promote economic growth and improve the relative economic position of these entities. New York State has made a commitment to create opportunities to assist small businesses and M/WBEs, and created an incentive for agencies to enter into contracts with such firms

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<sup>75</sup> The current \$30,000 advertising threshold for the Office of General Services would also remain unchanged.

by allowing procurements without formal competition for contract awards up to \$50,000. The law created the same incentive for agencies to purchase recycled or remanufactured products.

To continue this incentive, the Comptroller recommends raising the discretionary buying threshold to \$100,000 for M/WBEs, as well as small businesses and recycled/remanufactured goods. Failure to increase the current threshold to complement the change in the general discretionary threshold would negate any procurement advantage available to small businesses and M/WBEs, as well as the existing encouragement to purchase recycled or remanufactured products.

To increase transparency and opportunity, the Comptroller proposes a new requirement for advertisement by agencies awarding contracts valued between \$15,000 to \$100,000 to certified M/WBEs or small businesses, or purchasing recycled or remanufactured goods. In such cases, instead of publishing the notice before the selection of the vendor, the agency would be required to publish a post-award notice, such as is currently required in the case of emergency procurements. The advertisement would identify contract purpose, amount, selected vendor and contract duration. This will help competitors recognize purchasing patterns and pursue non-competitive contracts at appropriate times.

The Comptroller also recommends establishing an exception to General Municipal Law bidding for purchase contracts of up to \$25,000 awarded to qualified M/WBEs. This will provide an incentive for local governments to award contracts to M/WBEs, as well.

## **II. Administrative Reform**

A number of reform measures can be accomplished through administrative and regulatory actions. These measures require coordinated planning, responsive communication and interagency cooperation. The following recommendations support these principles.

### ***Establish a Vendor Responsibility Program***

Since January 2005, the Office of the State Comptroller has required agencies to submit a responsibility determination as part of the procurement record to help ensure the State is doing business with reputable, reliable firms. Ongoing efforts continue to further streamline procedures and eliminate unnecessary hurdles for vendors seeking to do business with the State. The Office of the State Comptroller will work with State agency officials and representatives of the vendor community to refocus resources in developing a straightforward, effective system.

Building on outreach efforts conducted in 2004, the Office of the State Comptroller Vendor Responsibility Team will develop, implement and administer an initiative to standardize and enhance State agency and Office of the State Comptroller processes related to vendor responsibility. Both vendors and State agency officials

have requested the development of a centralized system to capture responsibility data. In response, the Office of the State Comptroller will coordinate a project focused on sharing information to improve the efficiency and effectiveness of vendor responsibility reviews and developing system supports to facilitate vendor responsibility efforts. It is important, however, that the community of potential vendors provide input as this system is developed.

### ***Increase Oversight of Centralized Contracts***

As a complement to increased discretionary thresholds, the Office of the State Comptroller will develop a plan to increase its oversight of higher value contracts entered into by State agencies, based on statewide contracts procured by the Office of General Services (OGS). To take full advantage of the number and variety of contractors available through State contracts, OGS conducts on-going recruitment for many of these centralized services. When an agency initiates a procurement process, after determining that a preferred source cannot meet the identified need, the second step is to determine if the need can be met through a centralized contract. The emphasis on using these contracts underscores the need for increased oversight.

In State fiscal year (SFY) 2003-04 alone, the Office of the State Comptroller approved 960 OGS centralized contracts with a combined estimated total value of over \$1.2 billion. When added to other centralized contracts, an estimated \$7.6 billion is available to agencies to spend through these contracts. In SFY 2003-04 alone, State agencies procured \$1.3 billion worth of goods, services and technology off centralized contracts that was not subject to Office of the State Comptroller review and approval. Additional pre-audit by the Comptroller will ensure State agencies are entering into procurements based on best value decisions and in compliance with the terms of usage envisioned when the terms of the statewide contract were enacted.

The State Comptroller recently called upon OGS to improve its oversight of Comprehensive Service Agreements (CSAs), one of the types of existing centralized contracts. Under these agreements, various agencies spend hundreds of millions of dollars on technology-related purchases through standing contracts negotiated by OGS. Through the CSAs, State agencies may purchase advisory consulting, software consulting, hardware maintenance and training services without competitive bids from the State's four major computer hardware providers.<sup>76</sup>

Although a major rationale for negotiating CSAs is to provide higher rates of discounts to agencies, it appears that these financial incentives are not always obtained. There is also evidence that State agencies have been using these agreements as a matter of convenience in place of seeking competitive bids.

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<sup>76</sup> An Office of the State Comptroller audit released in October 2004 on the CSA with IBM found that from March 1997 through March 2004 contract expenditures totaled \$200 million. In the last three fiscal years (ending 2003-04) alone, 38 State agencies spent approximately \$137 million on contract-related services.

### ***Establish an E-Procurement Initiative***

Currently, there is no concerted statewide effort to implement electronic efficiencies in New York's procurement system, although some State agencies manage contracts on-line and OGS electronically catalogues some statewide contracts. The stages in the procurement process, as well as the actual procurements, however, remain paper-based.

An emphasis on technology in procurements would produce greater coordination among all entities involved in the procurement process. Greater efficiency would directly result from a system-wide employment of e-contracts, e-grants, e-procurement and e-payment. E-procurement could reduce transaction costs associated with manual, paper-based processes. Vendors seeking to do business with the State would also benefit by more easily reaching wider markets through one-source access to all agencies.

The Comptroller recommends the Executive set a goal for SFY 2007-08 for the development of a comprehensive plan to transition from a traditional paper-based procurement system to an electronic system. It is also recommended that the Comptroller's Office participate in any effort established to promote this goal.

## **III. Legislative Reform**

Many changes affecting procurement reform, in addition to the proposed threshold increase, require statutory changes that can only be accomplished through legislative action.

### **Reform of the Procurement Stewardship Act**

First enacted ten years ago, the PSA has provided New York State with guidance for procurement policies and procedures. As procurement practices and policies evolve, it is advantageous to review the Act and discern those areas of the law where there is opportunity for additional reform. Following are a number of recommendations designed to accomplish three primary goals: clarification of the existing law, formalization of procedures and provision of flexibility replete with safeguards. If adopted, these improvements would eliminate the need for a sunset date for the PSA. The Comptroller recommends the adoption of these reforms, and the imposition of a new sunset date for the Act five years after enactment.

#### **A. Clarification of Existing Law**

##### ***Aggregating Purchases***

The PSA sets the discretionary buying threshold, but does not establish a timeframe for aggregating purchases of same/similar goods and services. Consequently, there has been extensive debate among State agencies regarding the

appropriate period of time. Certain agencies have split orders to avoid formal competition or to avoid pre-approval of the procurement by the Office of the State Comptroller. Manipulated splitting can, in fact, result in a large sum of public funds being spent, through a series of smaller separate purchases, without review. While OGS suggests that agencies aggregate their needs over a 60-day period to determine if a purchase is discretionary, advisory opinions under the GML support a one-year period.

The Comptroller recommends codifying in statute that agencies aggregate their needs over a one-year time period to determine if a purchase is discretionary.

### ***Piggybacking***

The PSA, while authorizing piggyback contracting, is silent on the factors to be considered by an agency when making such a procurement decision. The purpose of a piggyback procurement is to provide goods or services at a lower cost than an agency could obtain through a new procurement, but the supporting documentation is often insufficient to justify piggybacking off an existing contract. In addition, the documentation is often unable to demonstrate the goods and services procured in the piggyback are commensurate with those received by the host agency.

To ensure the provision of appropriate documentation for piggybacks, the Comptroller recommends requiring agencies to document in the procurement record the basis for its determination, specifically including the factors OGS has advised agencies they must consider.<sup>77</sup>

## **B. Formalization of Procedures**

### ***Debriefings***

Regardless of the advice contained in the Procurement Council's Guidelines (which states that debriefings should be offered to unsuccessful vendors), a number of State agencies are frequently reluctant to debrief unsuccessful vendors prior to the Comptroller approving the contract award. This precludes such unsuccessful vendors from filing any meaningful protest, which could sway either the procuring agency or the Office of the State Comptroller in their respective determinations. To solve this problem, the Comptroller has in the past stated, in the context of a bid protest decision, the Office would not approve a contract if an unsuccessful vendor requested a debriefing until such debriefing was offered. However, a legislative solution is preferable, whereby all unsuccessful vendors would know their rights to be debriefed and all agencies would understand the necessity of providing such debriefing.

The Comptroller recommends clarifying the law to require the awarding agency to debrief an unsuccessful bidder, upon request, and to hold that debriefing before the contract is submitted to the Office of the State Comptroller for approval.

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<sup>77</sup> OGS Purchasing Memorandum CL 288.

An appropriately conducted debriefing can eliminate the need for a formal protest by providing acceptable answers to the unsuccessful bidder. Conducting the debriefing, and possibly eliminating a potential protest, also can save time in the procurement review and increase the ability of the agency to secure needed commodities or services in a timely manner. Finally, debriefings should occur before the contract is submitted to the Office of the State Comptroller because once Comptroller approval has occurred, the only avenue available to a dissatisfied, unsuccessful bidder is litigation.

### ***New Procedure for the Selection and Award of Grant/Program Procurements***

The PSA as originally enacted recognized the difference in grant programs and exempted contracts with not-for-profits (NFPs) from the provisions of Article 11. Grant programs usually do not require the proposer or applicant to provide specific end products or deliver specific goods or services. Consequently, a comparison and evaluation of the total costs and technical merits of competing proposals or applications for the purposes of ranking and selection is often not practical. Furthermore, State Finance Law, Article 11-B, which is known as the Prompt Contracting Law, was intended to apply only to NFP organizations seeking grant awards. Current law, however, does not address recent developments.

More and more for-profit entities are now applying for grant-type awards that have traditionally been confined to the NFP arena. Welfare to work and other training activities are examples of the types of programs funded by grants for which for-profits apply. For-profit corporations are also applying for grants to train their staffs or to increase workplace safety. In these situations, an agency is required to make a “best value” determination weighing the quality, cost and efficiency of each proposal.

The Comptroller recommends changes to the selection and award procedure that would apply when grants are open:

- Only to NFPs and/or municipalities, or
- To NFPs and/or municipalities and to for-profit entities where the procuring State agency has obtained from the Comptroller an exemption from the requirements of the PSA.

Specifically, the Comptroller’s proposal defines the term “program procurement” and requires that awards are made to proposals with reasonable costs, based on technical merit and/or public benefit. It is important to note that the proposed change does not preclude a State agency from evaluating costs in the selection and award process for program procurements. Further, the Comptroller proposes that program procurements be excluded from the definition of services contained in Section 160(7) of the State Finance Law.

## **C. Flexibility and Safeguards**

### ***Ability to Waive Minor Deviations***

The Office of the State Comptroller regularly encounters circumstances wherein the contracting agency has unwittingly deviated from certain formal competitive bidding requirements. Where the agency has otherwise conducted a good faith competition and the deviation(s) do(es) not favor the winning bidder nor prejudice the losing bidders or non-bidders, the Office of the State Comptroller often attempts to salvage these procurements by approving them on a single source basis. The rationale the Office of the State Comptroller applies is the best interest of the State. Generally in these instances, the Office of the State Comptroller expects that the same bidder would win a re-bid and, therefore, State resources (time and money) would be wasted by conducting a new procurement. (See Appendix A for examples of this type of assistance provided to agencies by the Office of the State Comptroller.)

The Comptroller recommends clarification to provide the Office of the State Comptroller with statutory authority to waive minor deviations from competitive bidding requirements. Obviously, this ability would be employed judiciously, and only when certain standards have been met.

### ***Pilot Procurement Methodologies***

Contracting entities may develop a procurement solution that, although it does not fit within the PSA, would clearly be in the best interest of the State.

The Comptroller recommends legislation to provide flexibility to approve a pilot solution if:

- The procuring agency demonstrates that a Pilot Procurement Method would better serve the interests of the State than other methods currently available under the PSA,
- The Pilot Procurement Method can be applied on a fair and equitable basis,
- The Comptroller agrees with the procuring agency's proposed Pilot Procurement Method, and
- The procuring agency must file a report, due by mid-term, of the resultant contract to the Comptroller, assessing the procurement method's success or failure. The Comptroller will then review the report and make written recommendations to the Governor and the Legislature regarding the possible continued use of the Pilot Procurement Methodology.

Although unique arrangements between State agencies and businesses were envisioned as strategic partnerships at the time the PSA was enacted, this provision has not been used successfully. Authority to procure through a strategic partnership is predicated upon an existing State contract. In the nine years since the enactment of the

PSA, the State has entered into only one strategic partnership. In that case, the contracting agency, the Office for Technology (OFT), submitted to the Office of the State Comptroller its statutorily required mid-term report more than 17 months late.

The authority to award contracts on a single source basis actually mitigates the value of the strategic partnership provision. Since the law currently allows for the award of a contract to a uniquely qualified entity, as a single source, this provision is unnecessary. Therefore, with the adoption of sufficiently flexible provisions, the Comptroller recommends repeal of the provision providing for Strategic Partnerships.

## **Changes Affecting Local Government Purchasing**

In addition to the threshold changes for the General Municipal Law, the Comptroller is proposing improvements to increase the ability of local governments to use existing federal contracts and to use credit cards—provided proper safeguards are in place.

### ***Piggybacking for Local Governments***

The Comptroller recommends expanding opportunities for local governments to take advantage of federal contracts. Currently, while OGS is authorized to use federal contracts under certain circumstances and to enter into joint purchasing arrangements with the federal government (under State Finance Law, Section 163[10]), there is no exception for political subdivisions to purchase from federal vendors as an exception to bidding. Access to these federal purchase contracts would save localities money by lowering purchase costs, as well as administrative expenses.

To provide opportunities for savings to localities, the Comptroller recommends authorizing political subdivisions to purchase through two federal programs (by a "piggyback" on the federal contract) as an exception to bidding requirements. The two programs are the federal "e-Government Act of 2002" (including IT items, such as data processing equipment and software) and the National Defense Authorization Act of 1994 (including law enforcement items, such as night vision devices, radios and cameras).

### ***Use of Credit Cards by Localities***

Some municipalities and school districts are currently using credit cards for small commodity and services procurement, as well as for travel expenses. Recent audit experience and discussions with school district organizations indicate the need to strengthen oversight and safeguards.

The Comptroller recommends legislation that would provide, as a prerequisite to the utilization of credit cards, the locality takes specific action to:

- Prescribe internal controls associated with the use of credit cards by requiring each local governing board to adopt a specific credit card policy containing necessary safeguards, and
- Ensure that other statutory safeguards (e.g., audit of claims, and need for proper authorization and appropriation) would not be compromised by the use of a credit card.

Since credit card purchases typically involve smaller purchases, this legislation is a desirable companion to the modernization of local bidding thresholds. It specifically makes authorization to utilize credit cards for procurement contingent upon the establishment of proper safeguards.

## **Other Legislative Initiatives**

### ***Prompt Contracting***

Not-for-Profit (NFP) entities are often subject to financial constraints that may impede their ability to continue to provide needed services. Delays in securing executed grant contracts could result in substantial financial loss for not-for-profit entities, as well as the interruption of critical services to vulnerable populations.

State Finance Law, Article 11-B, known as the Prompt Contracting Law, was enacted in 1991 to apply only to NFP organizations seeking grant awards to encourage the timely award of contracts. The Prompt Contracting Law requires that interest be paid by the procuring agency to the NFP if notification of intent to renew or terminate the contract is not mailed at least 90 days prior to the end of the contract. Current law, however, provides that the State agency and the NFP can mutually agree to waive the interest.

There have been many instances of late contract submission for grant programs to the State Comptroller for pre-audit, as indicated in Appendix B (New Contracts Approved in Relation to the Starting Date of the Contract for Grants table). As a result, NFPs have been awarded grants in an untimely fashion, leading to disrupted services and/or financial stress. This, in turn, affects staff and building maintenance or causes a discontinuation of already existing services or a delay in the commencement of new projects and services. While current law requires that an agency pay interest to a NFP in the event of a contract awarded late, the interest is frequently waived because the NFPs generally feel pressured to do so in order to obtain the grant.

In addition, notice to a NFP under current contract that it will *not* receive a new grant is often late as well. This also places great hardship on the NFP, which often continues providing services while waiting for the award notification. In such cases, the NFP incurs expenses that it will not recoup.

In practice, the intent of the Prompt Contracting Law has been undermined.

Not-for-profit entities have submitted proposed legislation, currently under consideration in both the Senate and Assembly, which would allow for the Prompt Contract Law to achieve its intended objectives. Among the provisions of the bill is a role for the Comptroller in determining that waiver of interest is required by unusual circumstances, and that the decision was made in the best interest of the NFP. It also provides for documentation of discussions or other means by which the agency and NFP reached agreement to waive interest to be included in the procurement record, and for reporting on the timeliness of NFP contracts. The Comptroller supports these provisions of the proposed legislation.

### ***Procurement Lobbying Reform***

There is no law in place that requires disclosure of procurement lobbying activities among State entities, including State agencies, public benefit corporations, public authorities and commissions. Currently, legislative law defines lobbying only as an attempt to influence the outcome of legislation by either house of the State Legislature or the Governor. Various proposals have been advanced in the Legislature and by the Governor to address procurement lobbying.

The Governor proposed legislation to build on Executive Order 127 that required State agencies and certain public authorities to record attempts to influence procurement decisions. Similar to the bill that has passed the Assembly and is now before the Senate, the Governor's bill would both regulate procurement lobbying by both requiring registration and reporting by lobbyists hired to influence procurements and by restricting contacts during the procurement period.

Assembly Speaker Silver sponsored a bill that passed the Assembly; it includes the same procurement lobbying provisions as the Public Authority Reform Act proposed by Comptroller Hevesi and Attorney General Spitzer, which was sponsored by Assemblyman Brodsky and passed the Assembly. These bills expand the definition of lobbying to include efforts to influence the actions of an official of a government agency, municipality or public authority related to the procurement of any contract for goods, services, public work or construction, or any contract relating to real property.

The bill further defines lobbying to specifically include efforts to influence contracts through:

- The procurement methodology,
- Terms of an invitation for bids, request for proposals or any other procurement solicitation,
- Terms of the contract,
- Selection of a contractor, or
- The administration, implementation or enforcement of a contract.

The bill also establishes a restricted period for procurement lobbying, which would begin with the issuance of any method designed to solicit a response from potential contractors and end with the tentative award of the contract. During this time, a potential contractor or its representative may not engage in lobbying activities. Contact is restricted to certain persons for specific purposes.

Having expanded the legislative definition of lobbying, the proposed legislation also makes necessary adjustments to current lobbying reporting requirements and the ban on contingent retainers to govern procurement lobbying.

### Specific Results of the Office of the State Comptroller Pre-Audit Review of Contracts and the Procurement Process

In its oversight role in the review and approval of State contracts, the Office of the State Comptroller's Bureau of Contracts (Contracts) follows a number of guiding principles and tenets:

- Support of the competitive bidding process.
- Protection of the State's best interest.
- Flexibility in its review of contracts.
- Provision of a level playing field for all vendors.
- Assurance that the State receives the best value for its money.
- Promotion of a fair and efficient review process.

The following examples are illustrations of how the Bureau of Contracts employs these principles during its review and approval process.

*The Office of the State Comptroller encourages and supports the competitive bidding process.*

During a recent review of a contract by the Office of Technology (OFT) for telecommunications equipment for the Capital Network Telecommunications System (CAPNET network), the Office of the State Comptroller questioned the extended terms (a five-year contract, and two, five-year renewal options) proposed in the contract.<sup>78</sup> OFT, however, could neither justify a 15-year contract term in view of the rapidly changing telecommunications industry nor deny potential bidders the opportunity to bid for 15 years. Through negotiations, mutual agreement was reached between OFT and the Office of the State Comptroller resulting in a five-year contract with a one, two-year renewal, thus ensuring the opening of the competitive bidding process after 7 years, instead of 15 years.

The Office of the State Comptroller has denied requests for a *Contract Reporter* Exemption, thereby requiring the advertising of proposed contracts. The Bureau of Contracts rejected a request for a *Contract Reporter* Exemption from University Hospital at Stonybrook to purchase two ambulances based on the absence of justification to support the emergency nature of the request, and the lack of specificity, thereby encouraging Stonybrook to use the competitive bid process and provide transparency in the procurement.<sup>79</sup>

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<sup>78</sup> Capital Network Telecommunications System, or CAPNET, is a State-owned and managed telecommunications network established in 1987. The system links most State offices in the greater Capital District providing lines for 35,000 users through a 35,000 line PBX. Additionally, the system allows 30,000 users access to a voice mail system.

<sup>79</sup> A *Contract Reporter* Exemption precludes the competitive bid process by negating the need to advertise the procurement.

*The Office of the State Comptroller does not approve contracts containing needlessly restrictive specifications or limiting competition.*

OFT converted an Office of Mental Health (OMH) contract for an automated time and attendance system into a statewide contract, but it was returned by the Office of the State Comptroller unapproved. One agency's procurement does not justify a decision to make one contractor the statewide technology standard or the preferred vendor. The Office of the State Comptroller required there be three or more time and attendance vendors on contract and that each agency seeking a time and attendance system conduct a competitive bid among all vendors on contract.

SUNY Geneseo submitted a contract wherein one vendor would run Geneseo's duplicating center. The Bureau of Contracts staff returned the contract unapproved because the Request for Proposal (RFP) was drafted in such a manner that only one vendor could win the bid.

*The Office of the State Comptroller supports agency initiatives that promote best value.*

Contractors bidding on a Department of Transportation (DOT) project provided bids that included not only the project cost, but also the number of days it would take to complete the project. The winner was selected under an agreement that provided for penalties if the project took longer than bid, and a bonus if the job was done in a shorter time period. The selected contractor ultimately finished the job a week early.

*The Office of the State Comptroller holds a responsibility to ensure that a level playing field is provided for all vendors. In contract review, the Office of the State Comptroller's objective is to protect the financial interest of the State, save money when possible and protect the State from other liabilities.*

A contract submitted by the Department of Environmental Conservation (DEC), totaling approximately \$15 million, would have established an automated system for hunting and fishing licenses. The Office of the State Comptroller raised a number of concerns with the contract, including indemnity, liability, intellectual property rights, liquidated damages and contract termination that did not adequately protect the State's interest. These concerns, together with an apparent change in the vendor's cost schedule methodology, resulted in the Office of the State Comptroller's return of the contract unapproved. The Bureau of Contracts staff worked with DEC to resolve the issues and ensure that the State's interests were protected, saving the State \$330,173 and reducing the contract amount accordingly.

*In protecting the State's financial interest, it is incumbent upon the Office of the State Comptroller to ensure terms of a contract provide the State with the best value. The Office of the State Comptroller often works with an agency to ensure appropriate documentation is included in the procurement record in determining the best value.*

In 2003, it was announced that a buyer was interested in purchasing a State facility from OGS. While the original sale price was supported by appraisals and reviews, the contract discounted the sale price by nearly \$2 million, or 50 percent. The

procurement record lacked adequate documentation to justify the discount negotiated as rent for housing State employees who would remain in the building for three years after the sale. After working with OGS to ensure that the contract would protect the State's financial interest and that the contract price was fair and reasonable, the Office of the State Comptroller approved the contract. Even with the additional documentation required from the agency, the Office of the State Comptroller approved this contract in less than 90 days.

*A level playing field for all vendors is promoted by requiring justification for best value, as well as by incorporating a fair mechanism to evaluate bid protests.*

The Department of Correctional Services (DOCS) issued a RFP for its Inmate Phone Home Program, provided through a revenue contract.<sup>80</sup> The two highest bidders for this five-year contract of approximately \$100 million submitted proposals that would generate the greatest revenue for the inmate program. DOCS awarded the contract and submitted it to the Office of the State Comptroller for approval. Upon award notification, the unsuccessful vendor protested the award.

A review by the Bureau of Contracts showed that both vendors took exception to mandatory requirements of the RFP and DOCS inappropriately deducted points for mandatory items from each vendor's proposal. DOCS subsequently offered both vendors the opportunity to accept or reject those particular RFP requirements. Both vendors accepted the requirements and DOCS initiated a re-score. Re-scoring the proposals rendered the protest moot, and the unsuccessful vendor was awarded the contract. The unsuccessful vendor of the re-scored award protested and, as is standard practice, was afforded an opportunity to be debriefed by DOCS. The Office of the State Comptroller subsequently approved the contract awarded through the re-scored process. As reflected in this procurement review, scoring must be treated equally for all vendors and be reflective of the RFP in order to create a level playing field for all contractors.

Another protest directed to the Office of the State Comptroller pertained to a \$25 million procurement let by OGS for buying heavy-duty dump trucks on behalf of DOT. OGS recommended an award to the lowest of four responsible bidders. The second low bidder then wrote to OGS claiming that the successful vendor's bid did not meet specifications in 19 areas; however, the response from OGS did not adequately address all the issues raised in the protest. While the Office of the State Comptroller generally gives deference to agency factual determinations, particularly when it falls within the expertise of the agency, the Office of the State Comptroller's role is to ensure that the professional decisions are documented and justifiable. Upon receipt of the contract, the Office of the State Comptroller requested detailed responses to the issues raised in the protest. After review, the Office of the State Comptroller upheld an OGS denial of the bid protest and approved the original contract award.

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<sup>80</sup> Inmates may only make collect calls from prisons; legislation was enacted that requires revenue generated by these calls to be used to fund the Family Benefit services. The Family Benefit fund supports services that help families stay in contact with their loved ones in prison, helping to maintain ties between the inmates and the community to foster a smoother transition for the inmate to society after prison. An example of a Family Benefit service is the bus trips to prisons across the State for families to visit their family members in a distant prison.

*Since the concept of best value is inherent in the development of a “piggyback” contract, holding to the best value test also protects the State’s financial interest in this type of procurement.*

State Finance Law, Section 163(10)(e) provides the basis for “piggybacking,” a process allowing one agency to utilize another procuring agency’s vendor after considering other contracting alternatives. Agencies using a vendor under contract with another agency can take advantage of a high volume discount for even low volume purchases. The piggybacking agency enters into its own contract, but includes the procurement record of the original contract as its own. All piggyback contracts first require OGS approval and are then sent to the Office of the State Comptroller for review and approval. Proper use of this process does not replace competition in the marketplace, but adds another viable procurement alternative after consideration of all other options. The Office of the State Comptroller works to ensure piggyback contracts are used appropriately and competition is not precluded.

The Workers' Compensation Board (WCB) entered into a five-year contract, valued at just under \$5 million a year, for a complex set of scanning services that included the opening and sorting of mail, as well as imaging services. When several other agencies piggybacked off this contract, the vendor provided basic scanning services at a lower price per page. Before the original contract was to expire, the vendor offered to reduce WCB’s per page price in exchange for a new contract. The WCB requested an exemption from re-bidding the contract, maintaining the current vendor was entrenched in the project. The Office of the State Comptroller, in the interest of ensuring that State agencies obtain the best value, directed WCB to pursue a competitively bid contract in the event there was another company that could perform the work. Although a second bidder turned out not to be viable, the competition led the original vendor to bid the contract at a much lower cost per page. While this vendor’s substantially lower cost in the approved contract supports the value of the competitive process, the question remains whether the negotiated price of the piggyback contracts, which involved less complex services, had been, in fact, the best price. As a result, the Office of the State Comptroller will work to ensure that commensurate services are involved in future piggyback proposals.

*The Office of the State Comptroller regularly works with agencies in an effort to achieve best value.*

The Thruway Authority wished to extend its 15-year contract for the Thruway rest areas through re-negotiation. The Office of the State Comptroller held that forgoing competition for this \$300 million contract might not be in the State’s best interest. Other changes being considered by the Thruway Authority further supported the case for a new, competitively bid contract.

*In keeping with the operating principles of the Procurement Stewardship Act, the Office of the State Comptroller has challenged agencies that make an award that is not justified. This occurs, for example, when a bidder is rejected without justification.*

When the Office of Parks, Recreation and Historic Preservation (OPRHP) failed to award a competitively bid contract on the basis of the scoring methodology included in the procurement record, the Office of the State Comptroller worked with OPRHP to award the contract through a single source based on its special need, geography and other unique factors, preventing OPRHP from having to re-bid the contract, significantly contributing to the efficiency of the process.

*The Office of the State Comptroller's review of best value protects the State from potentially damaging financial liabilities.*

Protecting the State from liability was achieved through Office of the State Comptroller review of an OMH contract. OMH contracted to transfer ownership of a psychiatric building to the property's original owner, while OMH would continue to occupy one floor and pay \$2 million in rent. Terms of a 1925 contract provided that the property would revert back to the original owner in the event the State no longer used it as a psychiatric institute. The procurement record, however, did not justify how the \$2 million figure was calculated and if the rent would cover renovations and repairs. The Office of the State Comptroller discovered other issues in regard to environmental remediation on the site and whether or not Dormitory Authority bonds had been satisfied.

Furthermore, the Office of the State Comptroller objected to a prohibitively expensive holdover clause in the contract that allowed the tenant to remain in the location upon expiration of the lease, and worked with OMH to consider various holdover options. First submitted over three ago, this contract has been returned unapproved four times, but the Office of the State Comptroller continues to work with OMH on resubmitting the contract. Without Office of the State Comptroller review, the State could have been committed to an unfair and excessive financial liability.

DOH contracted to implement a new system for processing its Medicaid claims. An amendment to close out Phase I, the eligibility verification function, was submitted by DOH, but returned by the Office of the State Comptroller unapproved. The agreed upon amount appeared to compensate the vendor for certain operating costs that should not have been incurred. Furthermore, the procurement record failed to substantiate that these improper charges were *not* included in the settlement figure. Although a firm amount cannot yet be determined, it is expected that the Office of the State Comptroller oversight will result in significant savings to the State in this instance.

*The Office of the State Comptroller works to provide an efficient and fair review process.*

In the case of an OFT procurement regarding four data centers, OFT executed a new Comprehensive Services Agreement (CSA) for hardware, software, maintenance and consulting services for the data centers embedded with one vendor's products. CSAs are intended to provide greater accountability and improved performance

standards and may be used by any State agency or political subdivision to procure maintenance and consulting services for IT operations.

Although justified as a non-competitive, single source award, the contract subsequently included a number of enhancements negotiated by the Office of the State Comptroller. The CSA affords OFT greater flexibility in evaluating and replacing consultants, if necessary, and allows the Office of the State Comptroller to monitor and control CSA costs. The Office of the State Comptroller continues to work with OFT and OGS toward incorporating better safeguards in new CSAs.

*The Office of the State Comptroller is committed to provide more timely review decisions.*

In the majority of cases, the Office of the State Comptroller is able to provide a quick turn around time as it reviews a contract. A contract between the Department of Transportation (DOT) and Suffolk County regarding land surrounding an airport was approved in only ten days, despite the need to remedy an inaccuracy.

The Office of the State Comptroller was able to approve a highly complex contract submitted by the Division of the Lottery for the provision of video lottery gaming within a month because the agency not only solicited feedback from the Office of the State Comptroller throughout the procurement process, but it also provided documentation for all procurement decisions made. Despite the complexity of the contract, cooperation and early planning resulted in an effective review and approval process.

The Office of the State Comptroller implemented a Quick-Contracting program to streamline the contract review process in 1998. The program is for low-risk contracts, such as those awarded to the low bidder that must meet a number of criteria. The Office of the State Comptroller then checks for basic items instead of doing a full pre-audit of the contract, providing its final review of a contract within two days. The Office of the State Comptroller performs post-audits of a statistical sample of Quick Contracts. In the event misrepresentation is uncovered, the Agency loses its Quick Contract privileges. To date, no agency has lost its privileges.

*The Office of the State Comptroller has established protocols to protect the State's intellectual property rights.*

Often, State agencies, such as DOH, OMH and SUNY enter into contracts with private businesses for the transfer of patentable innovative technologies, developed by State employees and employees of their associated research foundations. The Office of the State Comptroller requires language in these contracts to protect the State's financial interest since it expects some of the proceeds of the commercial marketing to revert back to the State.

*The Office of the State Comptroller has incorporated internal controls that guard against fraud.*

All divisions within the Office of the State Comptroller established internal protocols with the Bureau of State Expenditures (State Expenditures) during 2004 regarding liens and contract name changes to guard against duplicative charges and the potential for fraud. These protocols were implemented to further ensure State Expenditures would be aware of any transactions entailing a lien that the Bureau of Contracts would be approving. This effectively closed a gap that potentially could have allowed the release of payment on a contract as a lien *was in the process* of being placed on a contractor.

State Expenditures staff was also able to red-flag State Education Department (SED) vouchers in excess of \$15,000 for which no contract had been signed. The investigation led the Bureau of Contracts to discover other irregularities, particularly in regard to the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) within SED. The investigation indicated that the VESID regional offices had a great deal of control over which vendors provided services and which ones did not. After evaluating the various contracts, the Office of the State Comptroller assisted VESID in restructuring the manner in which it procured services.

*The Office of the State Comptroller encourages interagency cooperation to facilitate the review and approval process.*

In 1989, the Office of the State Comptroller, OPRHP and DEC established the Letter of Intent (LI) policy, governing how third-party agreements are handled. The LI declares the State's intention to buy a particular parcel of land and is required when a third party, usually an environmental group, buys land to hold for the State when certain purchase conditions apply. The LI policy prevents pressure for State officials to engage in hastily negotiated deals that ensure land is available when the State is ready to buy, hinders political pressure and keeps the State in control of what it buys. In such land contracts, the Office of the State Comptroller requires that the LI is included in the procurement record.

In the case of a land contract for the Clarence Fahnestock State Park, the Office of the State Comptroller took into account alternate documentation that demonstrated OPRHP's prior intention to purchase, while still protecting the State from the potential of undue influence and fraud. The State ultimately purchased land from a third party, despite attempts by the third party to abandon the LI policy. The Office of the State Comptroller and the Attorney General were able to determine previous intent on the part of the State to purchase this parcel of land, while still upholding the concept of the LI policy.

The Office of the State Comptroller works with the agency whenever additional documentation is required for the procurement record to uphold the Procurement Stewardship Act (PSA) standards. The Bureau of Contracts staff has assisted SUNY Health Science Center at Brooklyn (SUNY Brooklyn) throughout its attempts to procure food services for the Hospital. These attempts have involved five proposed awards

over the course of seven years. Throughout this seven-year process, the Office of the State Comptroller typically waited more than a month for responses to questions it raised regarding the procurement.<sup>81</sup> As additional information was supplied by SUNY Brooklyn, it frequently raised even more issues that needed to be resolved. SUNY Brooklyn's management of this procurement was reactive instead of proactive, and this resulted in a lengthy and unwieldy process.

Currently, a recently hired Director of Contracts and Procurement Management at SUNY Brooklyn is leading efforts to improve the hospital's procurement process and correct past practices. One notable change has been the new Director's pattern of regular contact with the Office of the State Comptroller. It is clearly more efficient for all parties for the Office of the State Comptroller to proactively work with agencies during the bidding process as opposed to correcting procurement problems in the closing hours of the process.

*Complex agreements or lack of documentation can slow the review and approval process.*

A complex agreement involving a number of parties, combined with a lack of sufficient documentation, can extend approval beyond 90 days. An inter-municipal exchange agreement (IEA) between OGS, Erie County, a non-profit organization and the Division of Military and Naval Affairs (DMNA) involved intricate land transfers. Since the contract submitted for review lacked information in a number of areas, the Office of the State Comptroller worked with the contracting parties over several months to obtain all required documentation. Although this entire process was lengthy, once the procurement record was complete, the contract was approved and released within two days.

*The Office of the State Comptroller works with agencies to restructure a submitted contract when necessary.*

The Office of the State Comptroller worked with the Department of Taxation and Finance (Tax) and OGS to resolve an unexpected problem and avoid the need to re-bid the printing of the Personal Income Tax packets. When Tax identified a problem in December 2004 with the mailing label provided on the tax return packages, the tax books needed to be reprinted. A re-bid could have resulted in both a delay in the State receiving income tax revenue on the 2004 tax returns and in additional printing costs. Although the contract did not provide for reprints, and State printing is regulated under the Printing and Public Documents Law, the Office of the State Comptroller determined that the printing law envisioned the possible need to reprint documents and worked with OGS and Tax to amend the original contract accordingly. The vendor needed only reprint the covers with the correct mailing labels, and the tax packets were completed for a timely mailing in January.

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<sup>81</sup> For example, the Office of the State Comptroller contacted the Agency on December 1, 2003 for information that should have been included in the procurement record. The additional documentation did not arrive at the Office of the State Comptroller until January 19, 2004.

Potential risks to homeland security regarding non-responsibility issues with the State's guard service contractors resulted in contract terminations. The effect of terminating the majority of the existing guard service contracts, however, resulted in an inadequate availability of guard service and jeopardized the safety of personnel and the State's assets. The Office of the State Comptroller worked with OGS to process two statewide "emergency" guard service contracts on a single source basis, while OGS revised the bid specifications for a new Invitation for Bid (IFB).

*Contract review for grants requires flexibility.*

Contracts funded by grants are handled differently from IFBs or RFPs. The Office of the State Comptroller policy has always been that agencies need to competitively procure for grants, unless specific legislation requires otherwise. The Office of the State Comptroller has worked with agencies, however, to meet the needs of the populations served by the grants, while maintaining standards. To accomplish this, the Office of the State Comptroller has the agency forward the procurement record for review prior to sending the grant contract. The Office of the State Comptroller's expectation is to complete this review within 30 days. When the Office of the State Comptroller communicates that the procurement record is solid, the agency submits the contract for review.

For contracts with not-for-profit organizations, the Office of the State Comptroller has always followed a 15-day review time frame. Section 179 of the State Finance Law, known as the Prompt-Contracting Law, provides for the payment of interest to the provider in the event the grant payment is late.<sup>82</sup> Even though legislation was enacted in 1991 requiring the procuring agency to pay interest to a not-for-profit in cases of late grant awards, the interest is often waived.

*The Office of the State Comptroller works with agencies to accommodate their specific needs and implemented a certification process to assist with the continued procurement with grants from the same providers of mental health services.*

As State offices (OMH, Office of Mental Retardation and Developmental Disabilities [OMRDD] and Office of Alcohol and Substance Abuse Services [OASAS]) procure for mental health services with grants, consumer choice is critical. The people receiving the services are the ones who choose the individuals (employed by the providers) with whom they work. When first building an infrastructure of reliable providers, OMH, OMRDD and OASAS maintain there had been competition. Adhering to a competitive process now would not be feasible because it would upset the provider-client relationship and cost more money in the end. For these reasons, the Office of the State Comptroller developed a protocol that allows these agencies to continue working with the same providers.

The Office of the State Comptroller requires certification that a provider is meeting an agency's needs according to very stringent standards developed by the

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<sup>82</sup> Agencies typically do not pay interest in such instances for three reasons: there is no enforcement of the provision, the provision allows the agency and the not-for-profit to waive the interest payments, and the not-for-profit often feels pressured to waive the interest in order to obtain the grant.

agency. The certification incorporates a quality assurance process in a year-end review.<sup>83</sup> The Office of the State Comptroller and the three agencies providing mental health services all agree that this is a suitable process for the existing providers. Contracting for new programs and new needs, however, requires the competitive bid process.<sup>84</sup>

*The Office of the State Comptroller helps agencies by developing special protocols.*

In order to facilitate the Division of Criminal Justice Services (DCJS) in the timely distribution of federal Homeland Security funds to the counties and New York City, the Office of the State Comptroller worked with DCJS to establish a protocol that would allow the transfer of the local grant money immediately upon contract approval. The resultant process allowed for the distribution of funds within two days of receipt of each contract.

*The Office of the State Comptroller acts to ensure the confidentiality of information.*

The New York State Emergency Management Office (SEMO) expressed concern over the confidential nature of information contained in certain contracts with the State. In light of potential terrorism, the Office of the State Comptroller worked with SEMO to safeguard this information by establishing a protocol to provide for review of the contract in a confidential setting without jeopardizing the objectives of the contract process.

*The Office of the State Comptroller remains committed to further improvements to the review and approval process.*

The Comptroller has implemented several measures resulting in greater efficiency. The Bureau of Contracts, for example, replaced a multitude of paper-based processes with a comprehensive Contract Management System (CMS) that contains the automated tools necessary to proactively manage the enormous volume of contracts reviewed each year. Bureau of Contracts staff makes improvements to this valuable system on a continual basis. The CMS serves as an innovative public sector model for processing efficiency, performance and risk management. Among the benefits is a decrease in overall contract review and approval time by nearly a full day.

Over recent years, the Comptroller has shortened the amount of time proposed contracts are under review by the Office of the State Comptroller. This reduced turn around time, as well as the Comptroller's high rate of contract approval, is attributable, at least in part, to the proactive approach office staff takes in procurement. The collaborative relationship the Office of the State Comptroller has worked to establish with agencies promotes the development of quality procurements and ensures that good value and fair pricing is achieved.

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<sup>83</sup> The certification process relates to the three agencies providing mental health services: the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, and the Office of Alcohol and Substance Abuse Services.

<sup>84</sup> The Office of the State Comptroller has not approved a request by the Department of Health to use a certification in lieu of the competitive bid process for its AIDS contracts.

The Comptroller has proposed a series of recommendations in this report, which will help in meeting the challenges that remain in reviewing the procurement process. These recommendations will serve to promote greater efficiency, while continuing to ensure the development of successful procurements in the best interest of the State.



**New Contracts Approved in Relation to the Starting Date  
of the Contract for Grants**

**TOTAL CONTRACTS**

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date	TOTAL
00-01	746	588	816	795	582	2,493	<b>6,020</b>
01-02	402	349	478	482	310	1,926	<b>3,947</b>
02-03	597	717	684	692	381	1,919	<b>4,990</b>
03-04	461	431	831	702	558	3,328	<b>6,311</b>
04-05*	114	255	594	344	160	133	<b>1,600</b>

**% OF SFY TOTAL**

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date
00-01	12%	10%	14%	13%	10%	41%
01-02	10%	9%	12%	12%	8%	49%
02-03	12%	14%	14%	14%	8%	38%
03-04	7%	7%	13%	11%	9%	53%
04-05*	7%	16%	37%	22%	10%	8%

Source: Office of the State Comptroller, Bureau of Contracts.

\*Note: SFY 2004-05 contains only the first six months.

## Renewal Contracts Approved in Relation to the Renewal Date of the Contract for Grants

### TOTAL CONTRACTS

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date	TOTAL
00-01	2,524	313	295	221	144	426	3,923
01-02	2,510	371	422	322	230	756	4,611
02-03	3,102	432	370	395	222	689	5,210
03-04	1,845	528	365	440	504	1,313	4,995
04-05*	681	212	287	275	63	170	1,688

### % OF SFY TOTAL

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date
00-01	64%	8%	8%	6%	4%	11%
01-02	54%	8%	9%	7%	5%	16%
02-03	60%	8%	7%	8%	4%	13%
03-04	37%	11%	7%	9%	10%	26%
04-05*	40%	13%	17%	16%	4%	10%

Source: Office of the State Comptroller, Bureau of Contracts.

\*Note: SFY 2004-05 contains only the first six months.

## New Contracts Approved in Relation to the Starting Date of the Contract for Contracts Other Than Grants

### TOTAL CONTRACTS

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date	TOTAL
00-01	770	1,377	1,111	512	277	418	4,465
01-02	944	931	744	364	230	584	3,797
02-03	1,006	1,292	612	312	175	650	4,047
03-04	1,033	885	614	397	263	514	3,706
04-05*	822	539	289	129	79	63	1,921

### % OF SFY TOTAL

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date
00-01	17%	31%	25%	11%	6%	9%
01-02	25%	25%	20%	10%	6%	15%
02-03	25%	32%	15%	8%	4%	16%
03-04	28%	24%	17%	11%	7%	14%
04-05*	43%	28%	15%	7%	4%	3%

Source: Office of the State Comptroller, Bureau of Contracts.

\*Note: SFY 2004-05 contains only the first six months.

## Renewal Contracts Approved in Relation to the Renewal Date of the Contract for Contracts Other Than Grants

### TOTAL CONTRACTS

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date	TOTAL
00-01	858	629	614	432	202	416	3,151
01-02	346	358	254	198	179	600	1,935
02-03	449	303	255	195	113	622	1,937
03-04	492	526	429	404	282	810	2,943
04-05*	356	376	304	208	78	76	1,398

### % OF SFY TOTAL

SFY	Approved on or before Start Date	1-30 Days after Start Date	31-60 Days after Start Date	61-90 Days after Start Date	91-120 Days after Start Date	Over 120 Days after Start Date
00-01	27%	20%	19%	14%	6%	13%
01-02	18%	19%	13%	10%	9%	31%
02-03	23%	16%	13%	10%	6%	32%
03-04	17%	18%	15%	14%	10%	28%
04-05*	25%	27%	22%	15%	6%	5%

Source: Office of the State Comptroller, Bureau of Contracts.

\*Note: SFY 2004-05 contains only the first six months.

## New Contracts Approved by the Office of the State Comptroller

Arranged by Contract Value for 2003-2004	2002-2003		2003-2004	
Procurement Category	Number	Value	Number	Value
Grants	7,994	\$1,586,381,970	7,286	\$3,087,688,515
Miscellaneous Services	978	5,247,593,396	975	2,092,031,506
Commodities	1,287	1,900,668,729	937	1,633,921,650
Quick Contracts	1,526	1,665,746,200	1,265	1,555,677,050
Revenue	410	170,352,397	369	1,346,938,655
Repayment Agreements	62	3,254,788,257	42	1,071,463,342
Consultants	929	808,248,925	851	852,018,104
Construction	404	656,870,740	476	552,621,857
Intergovernmental Agreements	113	168,732,625	134	517,524,313
Equipment	269	565,078,625	336	356,586,580
Leases	180	298,936,255	146	99,888,947
Land Claims	334	62,397,304	285	73,547,255
Printing	84	78,696,866	38	53,030,544
<b>TOTAL</b>	<b>14,570</b>	<b>\$16,464,492,289</b>	<b>13,140</b>	<b>\$13,292,938,318</b>

Source: Office of the State Comptroller, Bureau of Contracts.

Note: Differences from year to year can result from the approval of multi-year contracts in any one year and the approval of certain large dollar value contracts in any year.

**New Contracts by Award Method SFY 2003-04<sup>85</sup>**  
(arranged by dollar value)

Award Method	Number of Contracts	Dollar Value
Best Price	2,332	\$3,883,025,176
Competitive Grants	5,385	2,533,445,933
Negotiated	474	2,395,610,820
Best Value	553	1,799,585,544
Sole Source <sup>86</sup>	2,132	1,669,653,418
Single Source	605	530,791,030
Most Qualified	204	196,205,819
Piggyback	28	146,033,764
Emergency	392	44,385,454
Preferred Source	58	30,546,494
Unavailable	268	14,710,585
Pre-qualification	6	8,250,000
<b>TOTAL</b>	<b>12,437</b>	<b>\$13,252,244,037</b>

Source: Office of the State Comptroller, Bureau of Contracts.

<sup>85</sup> This chart represents contracts over \$15,000 that had expenditure activity during the fiscal year.

<sup>86</sup> Sole source includes contracts awarded based on legislative direction.

**Summary of the Top Ten  
Contracting Agencies SFY 2003-04<sup>87</sup>**  
(arranged by number of new contracts)

Agency	Number of Contracts	% of Total Contracts (by Number)	Value of Contracts	% of Total Contracts (by Value)
Health Central Administration	1,123	9.03%	\$1,865,830,893	14.08%
Department of Transportation	1,039	8.35%	1,972,432,857	14.88%
Office of General Services/P-Contracts	960	7.72%	1,207,715,218	9.11%
Office of General Services/Design and Construction	810	6.51%	196,628,860	1.48%
Department of Labor	760	6.11%	153,589,318	1.16%
Mental Retardation - Main Office	757	6.09%	135,343,111	1.02%
Division of Criminal Justice Services	693	5.57%	208,249,821	1.57%
New York State Council on the Arts	587	4.72%	30,140,260	0.23%
Department of Children and Family Services	508	4.08%	69,483,484	0.52%
Parks and Recreation - Main Office	441	3.55%	81,124,818	0.61%
OTHER	4,760	38.27%	7,332,262,396	55.33%
SUBTOTAL	7,678	61.73%	5,920,538,640	44.67%
<b>TOTAL</b>	<b>12,438</b>		<b>\$13,252,801,036</b>	

Source: Office of the State Comptroller, Bureau of Contracts.

<sup>87</sup> This chart represents contracts over \$15,000 that had expenditure activity during the fiscal year.

## Office of the State Comptroller Average Contract Review Days

### Not-for-Profit Contracts (New and Renewal)

SFY	Average Days
00-01	9.1250
01-02	9.7950
02-03	6.9150
03-04	4.8750
04-05	5.1667

### For-Profit Contracts (New and Renewal)

SFY	Average Days
00-01	16.5450
01-02	12.4600
02-03	8.7100
03-04	9.0850
04-05	9.1667

### Combined Contracts (New and Renewal)

SFY	Average Days
00-01	12.8350
01-02	11.1275
02-03	7.8125
03-04	6.9800
04-05	7.1667*

Source: Office of the State Comptroller, Bureau of Contracts.  
\*Six months experience contains non-PSA data.

**Contracts Returned Unapproved Top 20 Summary**  
**SFY 2003-04**  
(sorted by number of contracts)

Agency Name	Number of Contracts	Total Amount
Health Central Administration	399	(\$222,234,498)
Office of General Services/P-Contracts	361	(\$583,520,712)
Department of Transportation	342	(\$274,559,308)
Mental Retardation - Main Office	265	(\$35,689,606)
Department of Education	200	(\$71,436,987)
Office of General Services/Design and Construction	152	(\$37,218,046)
Health Science Center at Brooklyn (SUNY)	132	(\$67,370,531)
Environmental Conservation	125	(\$116,092,014)
Department of Labor	119	(\$196,759,705)
Mental Health - Main Office	115	(\$22,594,113)
Stony Brook (SUNY)	109	(\$709,808,943)
Health Science Center at Syracuse (SUNY)	98	(\$40,206,174)
Office of Alcoholism and Substance Abuse	91	(\$308,179)
Division of Criminal Justice Services	80	(\$82,272,211)
Department of Children and Family Services	72	(\$14,870,911)
Parks and Recreation - Main Office	70	(\$18,140,083)
Office of General Services	60	(\$42,265,410)
Department of State	53	(\$4,678,889)
Office of Court Administration - New York City	52	(\$3,305,940)
Agriculture and Markets	44	(\$17,846,657)

Source: Office of the State Comptroller, Bureau of Contracts.

Note: After contracts are returned unapproved, the Office of the State Comptroller continues to work with State agencies to achieve successful procurement. In State fiscal year 2003-04, a total of 4,448 contract transactions were returned unapproved to the contracting agencies. Of the 4,448, 1,707 contract documents were returned unapproved for various reasons and 2,741 Central Accounting System transactions were returned due to errors in the submitted Central Accounting System record.

**Contracts Returned Unapproved Top 20 Summary**  
**SFY 2003-04**  
(sorted by contract amount)

Agency Name	Number of Contracts	Total Amount
Department of Civil Service	12	(\$848,463,845)
Office for Technology	23	(\$815,623,154)
Stony Brook (SUNY)	109	(\$709,808,943)
Office of General Services/P-Contracts	361	(\$583,520,712)
Long Island Power Authority	11	(\$433,406,000)
Department of Taxation and Finance	21	(\$278,049,980)
Department of Transportation	342	(\$274,559,308)
Health Central Administration	399	(\$222,234,498)
Department of Labor	119	(\$196,759,705)
Department of Environmental Conservation	125	(\$116,092,014)
Division of Criminal Justice Services	80	(\$82,272,211)
New York State Thruway Authority	33	(\$77,791,185)
Department of Education	200	(\$71,436,987)
Health Science Center at Brooklyn (SUNY)	132	(\$67,370,531)
Department of Motor Vehicles	20	(\$58,790,511)
Office of General Services	60	(\$42,265,410)
Health Science Center at Syracuse (SUNY)	98	(\$40,206,174)
Office of General Services/Design and Construction	152	(\$37,218,046)
Mental Retardation - Main Office	265	(\$35,689,606)
Old Westbury (SUNY)	28	(\$26,907,939)

Source: Office of the State Comptroller, Bureau of Contracts.

### ***Comptroller's Executive Order on Procurement Integrity***

To protect the procurement process from improper influences within the Office of the State Comptroller, State Comptroller Alan G. Hevesi issued an Executive Order (EO) on Procurement Integrity in June 2004. This EO required the Deputy Comptroller for Investigations to develop procedural controls in the form of written Procurement Integrity Procedures to apply to determinations by the Office of the State Comptroller or the New York State Common Retirement Fund (CRF) to award a contract. These procedures:

- Require any employee to immediately record direct knowledge of any improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the Deputy Comptroller for Investigations.
- Prohibit contact relating to a bid, proposal or a procurement contract between all Office of the State Comptroller staff involved in the determination of the contract award and any employee, agent or consultant of a bidder or proposer competing for the contract during the procurement process.
- Establish a protocol for authorized contact for the purpose of providing information to Office of the State Comptroller staff to clarify a proposal.
- Provide for appropriate contacts between Office of the State Comptroller staff and employees, agents or consultants of the proposer for the purpose of negotiating contract terms after the evaluation and selection process is complete.
- Establish a process for the Deputy Comptroller for Investigations to review any allegations of improper influence or attempted improper influence, providing for the imposition of sanctions if improper activity is found to exist.
- Incorporate these procedural controls into all Office of the State Comptroller and CRF procurement solicitations and contracts.
- Provide that any Office of the State Comptroller employee who violates the Procurement Integrity Procedures may be subject to a disciplinary action, and any vendor who violates the procedures may be found to be a non-responsible vendor and subsequently determined to be ineligible to receive a contract award.

In response to this EO, after the Procurement Integrity Procedures were developed, a committee began meeting in August to analyze compliance by personnel with disclosure requirements. The Deputy Comptroller for Investigations will meet at least twice a year with personnel, unless a more frequent need is indicated, in order to evaluate the effectiveness of the Procurement Integrity Procedures.



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