
State Contracts by the Numbers

2019 Calendar Year

OSC Contract Review
Protects Taxpayer Dollars



OFFICE OF THE NEW YORK STATE COMPTROLLER

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Introduction

For over 100 years, the State Comptroller's pre-audit of contracts required by Section 112 of the State Finance Law has worked effectively to deter and prevent procurement errors and abuses in New York State. In 2019, contract review averaged 6.3 days for all contracts. These results clearly demonstrate that the Comptroller's efficient review has little impact on the overall time frame of procurements, which can last months and even years. Over 90 percent of contracts, representing a total value of more than \$43 billion, were reviewed within 15 days.

In 1995, the Procurement Stewardship Act enhanced the Comptroller's longstanding oversight authority and codified statewide procurement procedures modeled on the time-tested policies of the Office of the State Comptroller (OSC).¹ The Act also reaffirmed the importance of independent oversight by OSC to:

- Safeguard public money and ensure the protection of taxpayer interests;
- Deter favoritism, waste, fraud and corruption in the procurement process; and
- Ensure the efficient acquisition of high-quality goods and services at the lowest cost.

In 2009, the Public Authorities Reform Act extended OSC's contract review authority to include certain public authority contracts in excess of \$1 million.²

Beginning in 2011, certain contracts of the State University of New York (SUNY) and the City University of New York (CUNY) and their Construction Funds were removed from OSC oversight, followed by centralized contracts let by the Office of General Services (OGS) in 2012, with other contracts exempted through provisions adopted in the annual budget process. As a result, in State calendar year 2019, these entities awarded an estimated \$5.37 billion in contracts without the benefit of the Comptroller's pre-review oversight.

In 2017, in the wake of several procurement scandals involving allegations of corruption in the awarding of contracts for State economic development projects, Comptroller DiNapoli proposed legislation to enhance the integrity, transparency and accountability of the State's procurement process. That legislation, S.3984-A/A.6355-A, introduced that year was not enacted.

However, in 2019, an administrative restoration of the Comptroller's contract oversight was provided for a subset of those contracts of OGS, SUNY and CUNY previously exempted from review, and oversight of contracts of \$1 million or more and paid with State funds for the Research Foundation of the State University of New York and affiliated organizations was added. This agreement is embodied in a Memorandum of Understanding (MOU).³ While the MOU represents a step toward ensuring important taxpayer protections, in the long term, contract oversight provisions such as these should be embodied in law.

¹ Laws of 1995 (Chapter 83, Section 33, as amended).

² Laws of 2009 (Chapter 505, Section 14, as amended).

³ This MOU was signed on August 15, 2019, became effective on February 7, 2020 and was implemented within the time frame required through board approvals or procedural updates. [2019 MOU](#)

The Importance of Independent Review

The New York State Constitution empowers the State Comptroller to conduct pre-audit and post-audit examinations of expenditures. The Comptroller was given additional statutory powers in 1913 to oversee contracts which today distribute billions of dollars annually in State, school and local government spending.

Independent review is an important deterrent to waste, fraud and abuse. The Comptroller's independent review of contracts protects taxpayers, agencies, not-for-profit organizations and other vendors by ensuring contract costs are reasonable, terms are favorable to the State, and bidders were treated fairly.

This oversight authority enables the Comptroller to identify and address potential problems with a procurement before a contract has been finalized—before taxpayer money has been spent, projects have advanced, and important programs and services could be negatively affected.

OSC's review of contracts is preceded by an independent review as to form by the Office of the Attorney General (AG). When OSC's authority to review contracts is removed the additional oversight by the AG also falls by the wayside. Most critically, the AG provides an important check on potential liability issues and ensures that the contract contains appropriate legal protections for the State and its taxpayers. The AG's review is especially important when it comes to contracts which carry significant liability exposure, such as contracts where medical malpractice claims and the security of personal information are potential factors.

Contract Review

OSC's contract oversight extends to most State agency contracts, generally those where the contract value exceeds \$50,000. The Comptroller may also review State public authority contracts valued at more than \$1 million if they are either awarded noncompetitively or paid from State funds. In addition, any State agency seeking to waive competitive bidding and receive an exemption from its statutory requirement to advertise a procurement opportunity in the New York State Contract Reporter must first receive approval from OSC.

The Comptroller's contract review process adheres to rigorous standards to help ensure that:

- Competition is adequate and fair to all qualified vendors, reducing costs and ensuring good value to the State;
- Fraud or waste is detected and prevented before taxpayer money is spent;
- Funding for the contract has been reserved and agencies do not commit to greater spending than is authorized; and
- Vendors are responsible and eligible for government contracting.

Not only does this independent review have a strong deterrent effect on waste, fraud and abuse, as highlighted above, it can also provide an additional benefit to agencies by increasing their leverage in negotiations with vendors who may otherwise attempt to take advantage of the State.

Where Executive and Legislative actions eroded the Comptroller's oversight authority, events have brought the value of unbiased review back into focus. Selected examples of issues with contracts that were not subject to OSC's contract pre-review include:

- SUNY Buffalo engaged a \$2 million construction management service contract with a construction company whose officers and managers were charged months earlier in a \$15 million construction fraud scheme. (See <https://www.newyorkconstructionreport.com/bloomberg-lp-and-turner-construction-executives-charged-in-15-million-kickback-scheme/>.)
- OGS entered into a \$631,000 contract with a security firm that had been disqualified by the New York City School Construction Authority for overbilling the City \$100,000 over a two-year period. (See <https://nypost.com/2019/04/07/man-charged-with-stealing-over-100k-hired-by-state-government/>.)

Prior to the effective date of the new MOU in 2019, OGS let approximately \$4.65 billion in contracts not subject to OSC oversight. Over the past eight years, more than 100 information technology consultant contracts worth billions of dollars have been approved without the benefit of OSC oversight. By law, State agencies must use these contracts if they meet the “form, fit and function” requirements, and they are also widely used by local governments and school districts. Without assurance that fair, competitive rates are established in centralized contracts, there is a risk that State and local taxpayers pay more than necessary.

Issuance of Executive Orders which suspend the Comptroller’s independent oversight limits transparency and increases the potential for waste, fraud and abuse. Executive Orders can be an effective tool to address an emergency situation; however, continuing to extend such Orders beyond the emergency may not be in the State’s best interest.

The State Comptroller performs the contract review function for the benefit of taxpayers, vendors, not-for-profit organizations and State government agencies within a reasonable time frame that does not delay the procurement cycle.

Contract Review Time Frames

OSC is transforming its contract review process by incorporating data analytic technology and data-driven decision-making procedures. In 2019, the average length of time for OSC contract review was 6.3 days. Review time has decreased by approximately 31 percent over the past five years. By comparison, the agency procurement process (including bid development, solicitation, evaluation, contract negotiation and award) that precedes OSC review can stretch out for months or longer.

OSC understands the importance of prompt action in contracting, especially for not-for-profits that care for our most vulnerable citizens and for construction projects which must be completed within a short window of time when weather is favorable. OSC also continually prioritizes its contract reviews to accommodate urgent and emergency contracting situations.

Results for 2019 Demonstrate Cost-Effective Oversight

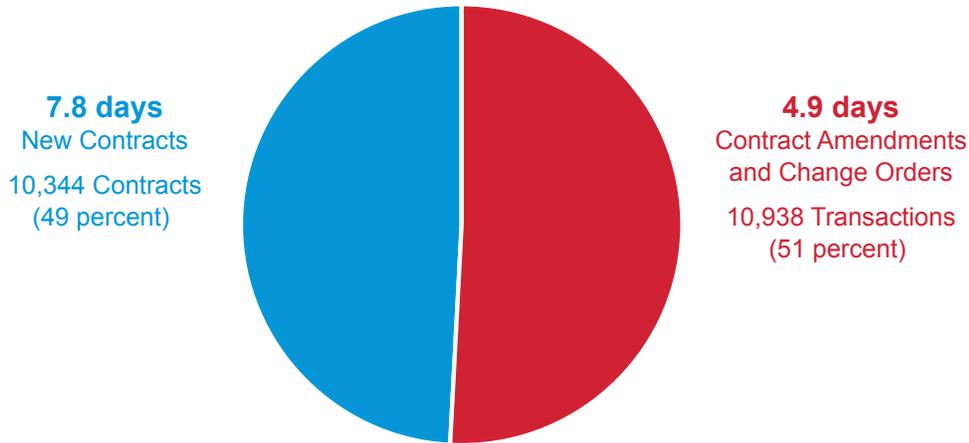
Average Review Time

OSC received 21,282 contract transactions, including both new contracts and contract amendments, valued at \$102.4 billion in 2019. The average time from agency contract submission to final sign-off was 6.3 days.

Average Number of Days for Transaction Review – Calendar Year 2019			
Type of Transactions	Number	Average Days for Review	Total Value
New Contracts	10,344	7.8	\$89.5 billion
Contract Amendments and Change Orders	10,938	4.9	\$12.9 billion
Total	21,282	6.3	\$102.4 billion

Average Days for Contract Review

6.3 – Overall Days to Review all Contracts, Amendments and Change Orders



Overall Number of Days to Review Contracts

While State law calls for OSC to review contracts within 90 days (with certain exceptions), nearly 92 percent of transactions reviewed in 2019 were reviewed by OSC in 15 days or less.⁴ An additional 7 percent were completed in 30 days or less—leaving less than 2 percent of the total at longer than 30 days while still well within statutory limits. The pie chart of Contract Review Time Frames, on the next page, helps illustrate how OSC achieved an average review time of 6.3 days in 2019, with the vast majority of all contracts approved quickly.

In limited cases, contract review may exceed anticipated time frames due to a variety of factors, ranging from avoidable agency errors and omissions in the submission (such as lack of required signatures or documents) to procurements with multistage evaluations and complex scoring that must be reviewed extensively to ensure all vendors received a fair opportunity to participate. In addition, bid protests on complex procurements can result in extended review time frames.

If the procurement package provided to OSC with the submission of the contract is missing key documents, it adds unnecessary time to OSC's review. In some cases, vendor responsibility issues or bid protests may become central to the outcome, and may entail additional review before a contract can be approved. In 2019, OSC denied seven protests and upheld one.

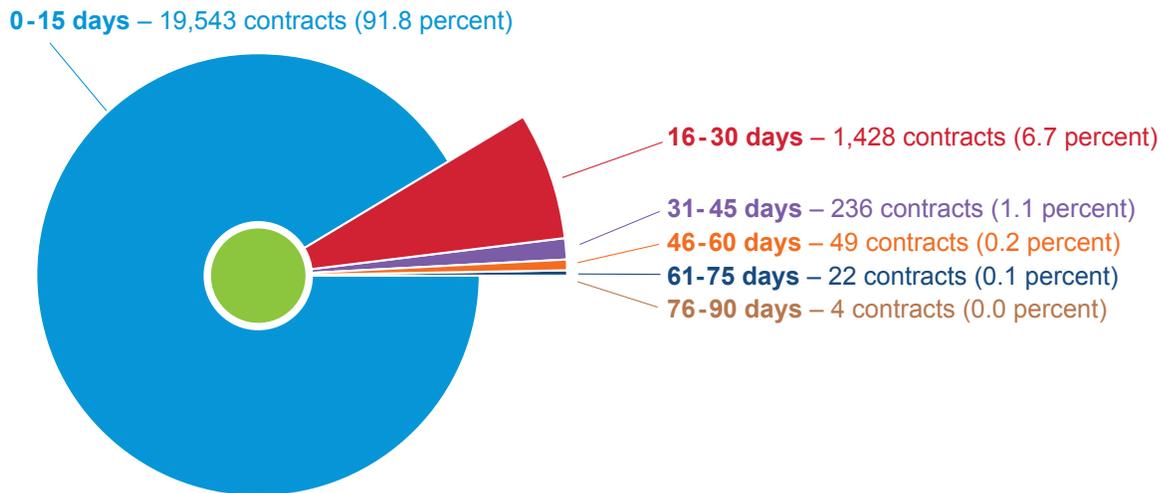
⁴ MTA and New York City Transit Authority transactions are statutorily subject to a 30-day review period. The MOU includes a 30-day review period for transactions, except that certain energy-related commodities contracts are subject to a 48-hour review period. In addition, Grant contracts are statutorily subject to a 15-day review period.

OSC’s independent review of bid protests provides a valuable appeal process for the contracting community and can help avoid the risk of lawsuits, which are costly for vendors and the agency. For example, OSC upheld a vendor protest in 2019 and rejected a DOT contract to install and implement a modern right of way and real estate information technology system because DOT’s evaluation and selection decisions were not in accordance with the evaluation methodology set forth in the RFP. (See http://www1.osc.state.ny.us/Contracts/Bid_Protest/bpd_SF20180264.pdf.)

OSC also publishes its bid protest opinions, affording a transparent reference for those involved in current and future procurements. (See <http://www1.osc.state.ny.us/Contracts/decisionsearch.cfm>.)

Contract Review Time Frames

Time to Complete Review for All Contracts in 2019

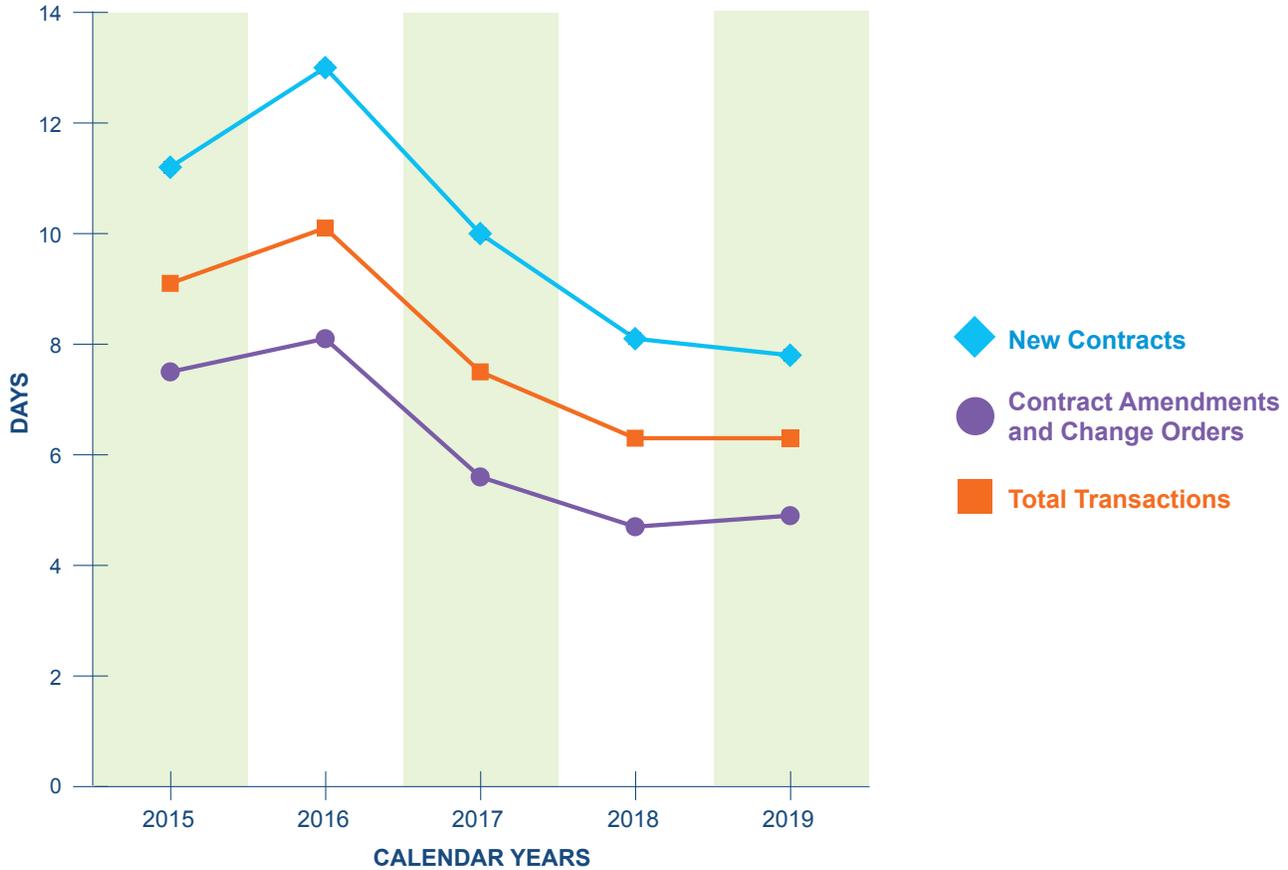


Days	Contract Transactions	Percentage of Total Contracts	Amount (\$ Billions)	Percentage of Total Value
0 – 15	19,543	91.8%	\$43.2	42.2%
16 – 30	1,428	6.7%	\$34.7	33.9%
31 – 45	236	1.1%	\$4.4	4.3%
46 – 60	49	0.2%	\$0.9	0.9%
61 – 75	22	0.1%	\$0.4	0.4%
76 – 90	4	0.0%	\$18.8	18.3%
Total	21,282	100.0%	\$102.4	100.0%

Note: Amounts are rounded to the nearest tenth of a percent. Completed contract reviews in the 76–90 day timeframe represent 0.02 percent of the total.

Contract Review Time Frames: Historical Trends

Average Time for Contract Review 2015–2019



Transaction Type	2015		2016		2017		2018		2019	
	Volume	Average Days for Review								
Contracts	9,099	11.2	8,831	13.0	9,027	10.0	8,898	8.1	10,344	7.8
Contract Amendments and Change Orders	12,282	7.5	12,817	8.1	11,840	5.6	10,753	4.7	10,938	4.9
Total	21,381	9.1	21,648	10.1	20,867	7.5	19,651	6.3	21,282	6.3

Benefits of OSC Contract Review

Protecting Taxpayer Dollars

Since 1913, OSC has been empowered to conduct an independent review of State contracts on a pre-audit basis, that is, before a contract becomes effective and tax dollars are spent. In addition, OSC reviews State agency requests for exemption from advertising in the New York State Contract Reporter, which is the first step for an agency to employ a specific vendor without competitive bidding.

OSC's contract review often finds opportunities to renegotiate costs, resulting in savings for agencies and taxpayers:

- SUNY Upstate Medical University (Upstate) submitted a two-year contract for short-term temporary physician services. OSC found that the term was inconsistent with previous contracts and SUNY policy. In addition, OSC found that Upstate had a contract budget reflecting 365 calendar days rather than 252 working days. OSC requested that Upstate modify the budget and the term, resulting in estimated savings of nearly \$1.7 million.
- The Department of Health (DOH) submitted an amendment to a contract for Medicaid Benefits Management. During its review, OSC identified an unused rebate and requested that DOH reduce the contract by the amount of the rebate. After factoring in the rebate and negotiating with the vendor for better pricing, the contract was resubmitted with estimated savings totaling over \$900,000.
- The Department of Transportation (DOT) awarded a contract for the construction of a new maintenance facilities building, but OSC found problems with limited competition and reasonableness of costs. DOT conducted a best and final price renegotiation with the contractor, resulting in actual savings of \$201,000.

OSC also identifies other errors, including overstated costs and duplication of other contracts. For example:

- OSC found that a \$6.2 million amendment to an agreement between the DOT and the City of Batavia for arterial maintenance was overstated. OSC rejected the transaction, which was then resubmitted in the correct amount, resulting in an estimated savings of \$5.8 million.
- SUNY Stony Brook submitted a \$4 million renewal contract for elevator maintenance. After making significant adjustments to estimated needs and correcting mathematical errors, OSC approved the transaction for \$2.7 million—an estimated savings of \$1.3 million.
- OSC's review of leases commonly finds duplication errors. The most common error was duplication between new lease terms and months accounted for in previous holdover transactions. In 2019, these findings generated estimated savings to the State of \$1.03 million.

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- The Office of Temporary and Disability Assistance (OTDA) submitted a three-year extension to an existing mail folding, collating and sorting services contract with New York Industries for the Disabled. OSC determined over \$1 million in contract value was still remaining on the original contract. OSC alerted OTDA, which resubmitted the transaction for the reduced amount, for a potential savings of over \$1 million.
 - The value of an amendment to a DOT contract appeared inflated and not supported by the documentation provided by DOT. DOT agreed with OSC that the amount was incorrect and the transaction was resubmitted, yielding an estimated savings of \$930,000.
 - OSC reviewed a new Office of Parks, Recreation and Historic Preservation agreement and found the amount submitted for the State's share of the cost was inconsistent with the amount described in the agreement. The transaction was resubmitted for the correct amount, resulting in an actual savings of \$400,000.
 - SUNY Upstate Medical University submitted a new five-year contract for valet parking services. Upon review of the contract, OSC auditors noted the vendor's management fee was duplicated in the cost calculations performed by SUNY. The contract was subsequently amended to remove the additional management fee, resulting in an actual savings of \$191,000.
 - OSC found that an Office of Court Administration (OCA) contract included a one-time payment that was incorrectly added to all five years of the contract. The transaction was resubmitted for the correct amount, with a potential savings of over \$183,000.

Pursuant to New York State Economic Development Law, OSC also reviews agency requests to contract with vendors without advertising the procurement opportunity, resulting in contracts that are awarded to a pre-identified vendor without competitive bidding. Under these circumstances, it is often difficult to determine whether the price is reasonable and the contract in the best interest of the State.

OSC reviewed 1,171 requests for exemption from bidding and advertising in 2019, and rejected 259. While some exemptions are necessary, they are often inconsistent with the intent of State procurement laws, excessive, or otherwise not in the best interest of the State. In such cases, OSC may decline requests, or limit the value or duration of the exemption. For example:

- The Office of Mental Health (OMH) submitted a request for exemption from advertising to extend a five-year lease of medication dispensing machines for a second five-year period. During its review, OSC found the request lacked a cost-benefit analysis for continuing the lease versus buying the machines. Upon resubmittal, OMH provided documentation showing they could buy the machines with a maintenance agreement for actual savings of nearly \$800,000.

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- SUNY Upstate Medical University requested an exemption from advertising for remote medical coding services without obtaining quotes in accordance with SUNY's own procedures. OSC rejected this request and required Upstate to solicit quotes for this service, saving the State an estimated \$71,000.
 - Long Island State Veterans Home at Stony Brook University sought to purchase a 1,500 gallon oxygen tank from a vendor without seeking additional quotes. After OSC requested it seek such quotes, Stony Brook received a lower estimate, which resulted in actual savings to the State of over \$21,000.
 - The Department of State (DOS) requested an increase in the hourly rates for legal staff involved with arbitration services. At OSC's prompting, DOS negotiated lower increases with the vendor, resulting in estimated savings of \$79,500.

Ensuring a Level Playing Field

A bidder can secure an unfair competitive advantage by failing to play by the same set of rules or by shortcutting State requirements observed by other bidders. OSC regularly finds instances where vendors are not playing on a level field. For example:

- During contract review, OSC ensures that all vendors have the required Workers' Compensation and Disability Benefits insurance coverage. This important protection for workers also protects the State, but can be viewed as a cost-savings for vendors who do not obtain or maintain the coverage. Likewise, OSC also identifies outstanding State, federal or municipal tax warrants or liens. Both of these cases illustrate how vendors may gain an unfair price advantage against other bidders. In addition, OSC's review may be the first step in getting a potential contractor to begin repayment of outstanding taxes or liens.
- During review of a State Education Department (SED) grant contract, OSC found two open federal tax liens and three open State tax warrants. Additionally, OSC found a \$53,000 New York State tax lien against the president and owner of the business. The contract was non-approved, as SED was unable to provide an adequate assessment or repayment status of the obligations.
- OSC reviewed an OGS contract and found that the vendor had an outstanding Unemployment Insurance lien with the Department of Labor (DOL) exceeding \$10,000. The vendor claimed it was unaware of the outstanding liability and promptly initiated a payment plan to satisfy the lien, enabling the State to receive funds owed and the contract to move forward.

Responsive Customer Service

OSC is sensitive to agency deadlines and the State's business needs. Delays in contracting often cost New York's businesses money, keep workers idle, harm not-for-profits and cost State taxpayers. Some examples of OSC's responsiveness to State agencies' requests, which ensured prompt approval of time-sensitive transactions, follow.

- The Office of Children and Family Services (OCFS) requested that OSC expedite increases to 170 contracts due to mandated minimum wage increases for not-for-profit (NFP) providers. These transactions, which were processed, on average, in less than one day, reimbursed NFPs that had already paid the cost of the wage increases to their staff.
- Responding to the urgent health and safety needs in Onondaga County that were the result of severe flooding around Lake Ontario, OSC supported the emergency mission of the Division of Military and Naval Affairs (DMNA) by giving immediate, verbal approval of a \$1 million emergency exemption request to cover lodging and meals for service members called to active duty.
- OSC expedited a review of OGS's newly adopted 1122 Program, which provides a mechanism for State agencies to purchase public safety equipment from federal contracts. OSC added value to the program by making procedural suggestions that streamlined the contracting process.
- DOS requested an expedited review of a contract extension for continued training and technical assistance for its Community Action Agencies. The extension enabled DOS to make payments to the existing vendors and avoid staffing issues while a new contract was put in place. OSC auditors were able to review and approve the extension in two business days.
- OSC worked with the Division of State Police to expedite a contract for next generation DNA sequencing equipment. As funds for this contract were about to be returned to the federal government, OSC received and approved the transaction on the same day.

Identifying Best Practices

OSC helps ensure that agencies follow best practices in contracting so the State can get the best value for taxpayers' dollars. These practices include:

- Conducting a broad outreach to vendors to achieve maximum competition for bids.
- Requesting independent appraisals to support the purchase or sale value of real property.
- Requiring proper vendor responsibility disclosure and review.
- Conducting market analyses to determine the reasonableness of a vendor's pricing and to substantiate bids when limited numbers of vendors compete for business.
- Requiring due process when a bidder is disqualified or when a low bidder is bypassed for a goods or construction contract.
- Establishing guidelines for accepting late bids, and for addressing situations where two or more bidders receive the same score to ensure a level playing field and protect the State.
- Ensuring contractors are aware of and are in compliance with required worker protections such as prevailing wage, Workers' Compensation and disability insurance, and equal employment opportunity / nondiscrimination requirements.
- Reviewing proof of required insurance coverages, certifications, bonds or other credentials to avoid delaying critical services or interrupting the work, and to ensure that bidders are kept on an even playing field.
- Demonstrating that State funds have been reserved within the State's accounting system to make timely payments to vendors.

Training and Support for Agencies

OSC is in a unique position to assist agencies because our staff members are trained in a wide variety of procurement methods and often review contracts with distinctive requirements or needs. For example, OSC:

- Shares information about vendor responsibility among agencies so all stakeholders can benefit from prior knowledge of contractors.
- Shares information about vendor pricing, sales volumes or the going rates for services across agencies to enhance the State's negotiating position.
- Helps agencies undertaking similar procurements to collaborate on bid documents or share technical expertise, saving the State time and money.
- Provides outreach, training and technical assistance to help agencies improve the quality of their procurements.
- Reviews complex bid solicitations and bid evaluation tools in advance to help ensure that agencies will get the best value, while avoiding unexpected delays or additional rounds of bidding.
- Maintains the Statewide VendRep System, which OSC created to enable vendors to go online to efficiently file information about their financial capacity, legal status, integrity and past performance through secure web access, and which is available 24 hours a day, seven days a week. A single filing through the VendRep System eliminates the need for multiple lengthy paper filings for each bid and contract.
- Offers an extensive knowledge of statute and procurement case law as a resource for agencies to avoid costly litigation in unusual or complex bids.
- Enhances transparency through OSC's Open Book New York website, which provides information on contracts, spending and more. (See <https://www.openbooknewyork.com>.)

Conclusion

Procurement is an area of government work that is highly susceptible to fraud, waste and abuse. The independent review of contracts by the Office of the State Comptroller provides a strong deterrent. OSC's investments in data analytics and other state-of-the-art technologies have brought advanced fraud detection to State contracting.

The types of fraud and abuse in procurement and contracting are varied, and opportunities continue to grow as new technology facilitates schemes such as identity theft and the mimicking of legitimate vendors by fraudsters. Some examples:

- Extortion and illegal influence and gratuities.
- Bribery, kickbacks and corrupt payments.
- Collusion and manipulation of bids, rigged specifications, leaking of bid information and inside information.
- Award of contracts to non-qualified bidders, or exclusion or discouragement of qualified bidders.
- Fictitious vendors, inflated or duplicate invoices.
- Change order abuse, extending the term of contracts instead of properly bidding, and unjustified sole source awards.
- Unnecessary middlemen, theft and skimming of money and property.
- Conflicts of interest.
- Unbalanced bidding.

OSC's professional procurement experts and experienced legal team are responsive to urgent agency deadlines. OSC is sensitive to the business needs of the State and to the adverse impacts on businesses and not-for-profit contractors when contracts are not processed timely.

The State Comptroller's role in the procurement cycle was established more than 100 years ago and has served taxpayers well. As government contracting has grown in size, scope and complexity, this oversight has become more important than ever. The Comptroller is committed to ensuring that State procurements deliver the highest possible value to the citizens of New York State.

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