



New York State Comptroller
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State Contracts by the Numbers

2020 Calendar Year

OSC Contract Review:
Protecting Taxpayer Dollars

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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 2020, the Office of the State Comptroller (OSC) received 16,356 contracts valued at \$235 billion. The contract review period averaged 5.8 days for all contracts. Over 92 percent of contracts, representing a total value of nearly \$151 billion, were reviewed in 15 days or less and all contract reviews were completed within their required time frames. 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.

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 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

There have been instances where OSC's contract review function has been bypassed. For example, 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 statutorily removed from OSC oversight, followed by centralized contracts let by the Office of General Services (OGS) in 2012. As a result, in State calendar year 2020, these entities awarded an estimated \$2.89 billion in contracts without the benefit of the Comptroller's pre-review oversight. Further, enacted State Budgets have routinely included provisions allowing billions of dollars in State spending without standard protections such as State Comptroller review and approval of contracts before they become effective.

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 2020, an administrative restoration of the Comptroller's contract oversight was provided for a subset of OGS, SUNY and CUNY contracts previously exempted from review. Oversight of certain contracts for the Research Foundation of the State University of New York and affiliated organizations of \$1 million or more and paid for with State funds was also 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.

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 are 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 Time Frames

OSC is transforming its contract review process by incorporating data analytic technology and data-driven decision-making procedures. These changes can result in improvements such as reducing review time and helping to focus limited resources on the riskiest contracts. In 2020, the average length of time for OSC contract review was 5.8 days—a decrease of over 42 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 the weather is favorable. OSC also continually prioritizes its contract reviews to accommodate urgent and emergency contracting situations.

Results for 2020 Demonstrate Cost-Effective Oversight

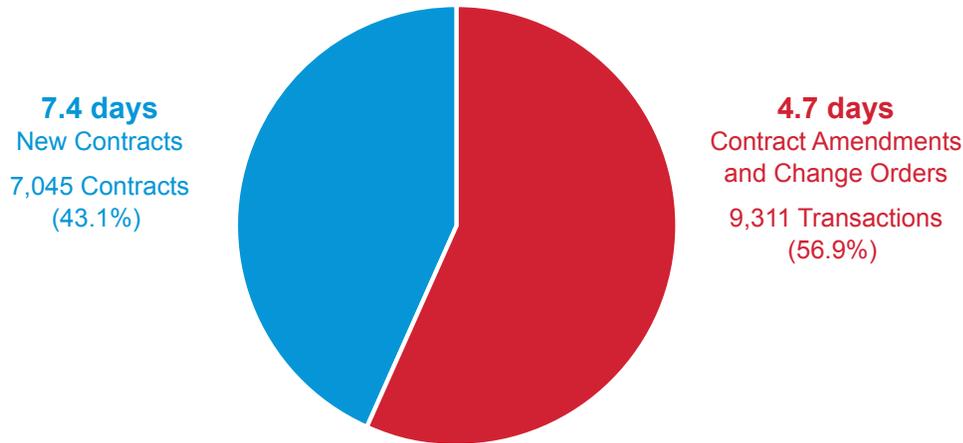
Average Review Time

OSC received 16,356 contract transactions, including both new contracts and contract amendments, valued at \$235 billion in 2020. The average time from agency contract submission to final sign-off was 5.8 days.

Average Number of Days for Transaction Review – Calendar Year 2020			
Type of Transactions	Number	Average Days for Review	Total Value
New Contracts	7,045	7.4	\$227.8 billion
Contract Amendments and Change Orders	9,311	4.7	\$7.2 billion
Total	16,356	5.8	\$235.0 billion

Average Days for Contract Review

5.8 – 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), over 92 percent of transactions reviewed in 2020 were reviewed by OSC in 15 days or less.⁴ An additional 6 percent were completed in 30 days or less—leaving less than 2 percent of the total at greater than 30 days and less than 90 days (still well within the required time review limits). The pie chart of Contract Review Time Frames, on the next page, helps illustrate how OSC achieved an average review time of 5.8 days in 2020, with the vast majority of all contracts approved in 15 days or less.

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.

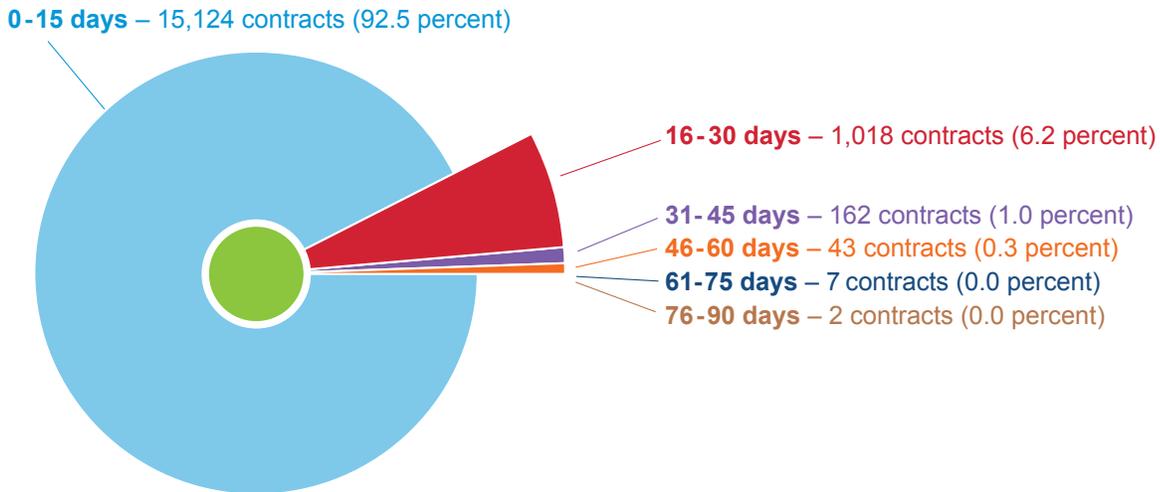
OSC's independent review of bid protests provides a valuable appeal process for the contracting community and can help avoid the risk of lawsuits, which are costly for vendors and the agency. In 2020, OSC denied two protests, and one was deemed moot. A fourth was upheld and a contract for tower and communications facility maintenance services was returned non-approved to the New York State Police (NYSP) because the technical evaluation methodology used to evaluate proposals was inconsistent with State Finance Law. (See http://www1.osc.state.ny.us/Contracts/Bid_Protest/bpd_SF20200058.pdf)

⁴ Metropolitan Transportation Authority 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 also publishes its bid protest opinions on its webpage, 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 2020

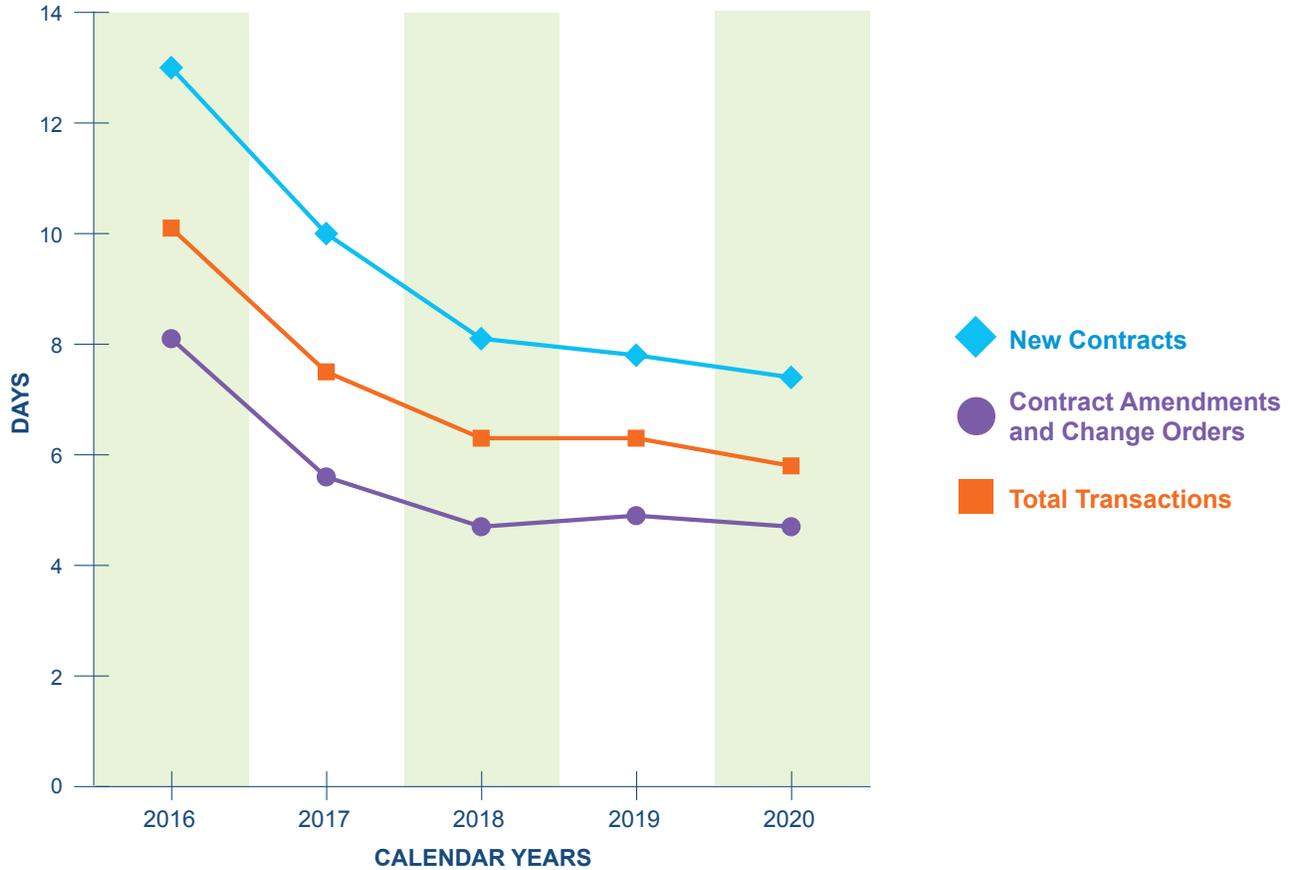


Days	Contract Transactions	Percentage of Total Contracts	Amount (\$ Billions)	Percentage of Total Value
0 – 15	15,124	92.5%	\$150.9	64.2%
16 – 30	1,018	6.2%	\$73.6	31.3%
31 – 45	162	1.0%	\$8.1	3.5%
46 – 60	43	0.3%	\$1.7	0.7%
61 – 75	7	0.0%	\$0.2	0.1%
76 – 90	2	0.0%	\$0.5	0.2%
Total	16,356	100.0%	\$235.0	100.0%

Note: Amounts are rounded to the nearest tenth of a percent. Completed contract reviews in the 61–75 day timeframe represent 0.04 percent of the total and the 76–90 day timeframe represent 0.01 percent of the total.

Contract Review Time Frames: Historical Trends

Average Time for Contract Review 2016–2020



Transaction Type	2016		2017		2018		2019		2020	
	Volume	Average Days for Review								
Contracts	8,831	13.0	9,027	10.0	8,898	8.1	10,344	7.8	7,045	7.4
Contract Amendments and Change Orders	12,817	8.1	11,840	5.6	10,753	4.7	10,938	4.9	9,311	4.7
Total	21,648	10.1	20,867	7.5	19,651	6.3	21,282	6.3	16,356	5.8

Benefits of OSC 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 in whole or in part from State appropriations. 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.

Despite the major advantages of having the Comptroller's oversight of contracts, there are numerous and recurring instances in which this authority has been eliminated or significantly reduced. In cases where Executive and Legislative actions have eroded the Comptroller's oversight authority, events have often brought the value of unbiased review back into focus. This was made evident during the COVID-19 pandemic when Gubernatorial Executive Order (EO) 202 suspended the Office of the State Comptroller's contract review and other laws for procurements related to the COVID-19 pandemic.

The EO was in effect for nearly 16 months from March 7, 2020 to June 25, 2021. During that period, substantial State resources were used for the purchase of supplies and equipment and other COVID-related goods and services, absent the benefit of the Comptroller's independent contract oversight. Issuance of Executive Orders which suspend the Comptroller's review and approval of contracts limits transparency and accountability 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.

For the time period between when the State Comptroller's statutory oversight of OGS centralized contracts was eliminated in 2012 and the implementation of the MOU which administratively restored certain oversight, OGS let at least \$37 billion in centralized contracts not subject to OSC oversight. This includes hundreds of information technology consultant contracts worth billions of dollars. 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.

Protecting Taxpayer Dollars

The State Comptroller's contract review function benefits taxpayers, vendors, not-for-profit organizations and State government agencies and does not delay the procurement cycle.

Often these reviews identify opportunities to renegotiate costs, resulting in savings for agencies and taxpayers. Examples include:

- The Department of Taxation and Finance (Tax) and the Department of Labor (DOL) submitted a joint \$74 million contract for customized lockbox services. During the contract review, OSC found the hours allocated to enhancing associated banking and financial systems were significantly higher under the new contract when compared to the previous contracts. Tax subsequently revised these hours to reflect historical hours from the previous three years. Projected savings via the reduction in enhancement hours equaled \$4.8 million.
- SUNY Health Sciences Center at Brooklyn submitted a contract amendment to increase the value of an existing contract for healthcare consulting services by \$2.8 million. OSC noted SUNY utilized a greater number of consulting hours than anticipated in the original contract and therefore asked SUNY to negotiate a lower rate. SUNY negotiated a \$25/hour decrease in the vendor's consulting rate, resulting in an estimated savings of \$198,400.
- The Department of State (DOS) submitted a new \$3.5 million contract for wholesale electric markets consulting and advocacy services. Upon OSC's review of competitor rates and the vendor's prior rates for providing these services, OSC found that the proposed rates were higher than both the competitor's rates and the rates in the prior contract. Upon OSC's request, DOS renegotiated the vendor's hourly rates and amended the contract, resulting in an estimated savings of nearly \$176,000.

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

- The Office of Information Technology Services (ITS) submitted an amendment to increase the value of a contract to support continued hardware and software maintenance and services. This contract had a history of annual surpluses carried forward from previous years. OSC asked ITS to justify the increase to the contract amount. ITS reconsidered the request and determined there were sufficient funds remaining on the contract to cover the cost of maintenance and services needed, resulting in a potential savings of \$9 million.
- SUNY Downstate submitted two contracts for hospital billing and collection services totaling over \$4 million each. OSC auditors found the contract values to be inconsistent with the multi-award solicitation which indicated the work, totaling \$4 million, was to be divided between two vendors. After resubmittal, the two separate contracts were approved for \$2 million each, resulting in an overall potential savings of over \$4 million.
- CUNY submitted an amendment to a contract for CUNY First Hosting services. When OSC auditors initially reviewed this transaction, they found that CUNY had miscalculated the funds remaining on the contract. The revised contract value resulted in a savings of \$2.8 million.
- The Office of Mental Health (OMH) submitted an amendment for a six-month extension to a preferred source agreement for laundry and linen services. OSC auditors found the agency had not considered funds remaining on the contract. The transaction was returned to the agency non-approved and was subsequently resubmitted with a revised contract amount saving an estimated \$729,000.
- OGS submitted a contract for bituminous concrete and services. Upon review, OSC determined that OGS erroneously applied the 26% Asphalt Price Adjustment twice to the contract bid. This issue was corrected, avoiding a potential overpayment to the contractor of nearly \$500,000.
- 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 2020, these findings generated estimated savings to the State of \$500,000.
- The Department of Motor Vehicles (DMV) submitted a contract for copier leasing. During its review, OSC found that DMV mistakenly applied a 10% escalation increase to the bid amount which was not allowed per the terms of the contract. This issue was addressed, saving \$474,000.

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- OMH submitted a contract amendment to add funding to a contract to support the creation of a Jail Diversion Center to reduce arrests and incarceration of persons with serious mental illness. OSC's review found that OMH requested a higher contract value than necessary based on budget needs. At OSC's request, OMH reworked the budget for a savings of \$275,000.
 - SUNY Buffalo submitted a transaction to conclude ongoing administration and support services for the State Education Department's Continuing Education Vocational Rehabilitation program. Upon review of the transaction, auditors noted that SUNY did not consider funds remaining on the existing contract. The transaction was returned to the agency non-approved and subsequently resubmitted at the correct dollar amount, resulting in an estimated savings of nearly \$134,000.

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 is in the best interest of the State.

OSC reviewed 1,064 requests for exemption from bidding and advertising in 2020, and rejected 209. 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:

- DOH submitted a request for exemption from advertising to extend a Pharmacy Benefits Management contract for an additional 17-month period. At OSC's request, DOH reviewed the remaining funds on the original contract and identified surplus funds—saving the State an estimated \$408,000.
- The New York State Police (NYSP) competitively bid a contract to purchase drones after OSC returned a request non-approved to purchase them through a single source without a competitive bid. After advertising the opportunity, the NYSP received eight bids, resulting in a savings of \$100,000.

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 it 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 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.
- OSC reviewed an Office for People With Developmental Disabilities (OPWDD) contract and found that the vendor did not appear to have Workers' Compensation or Disabilities Benefits coverage and had outstanding Workers' Compensation penalties of \$277,000. The contract was non-approved to allow the vendor and the agency time to resolve the issues but the vendor chose to withdraw their bid and the contract was awarded to another vendor.
- During review of an Office of Parks, Recreation and Historic Preservation (Parks) contract, OSC found the winning vendor had been debarred by the Workers' Compensation Board and had a \$70,000 open New York State tax warrant. In addition, the vendor failed to disclose either item on their Vendor Responsibility Questionnaire, as required. The contract was subsequently non-approved and Parks proceeded to award the contract to the next lowest responsible bidder.

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:

- OSC received an emergency purchase order for \$1.34 million from OPWDD to purchase 25 wheelchair vans to replace part of their aging fleet. OSC approved this transaction in one day.
- Parks requested technical assistance in processing an amendment to their reservation system contract. The contract terms needed to be temporarily adjusted so that cancellation fees would not be assessed to patrons for park closures resulting from COVID-19. OSC approved the amendment the same day it was received.

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- DOS requested an expedited review of two contract extensions which they indicated, if not timely approved, would result in job layoffs. The transactions were received and approved the same day.
 - OSC worked with OGS to pre-review certain documents as they prioritized Division of Military and Naval Affairs construction projects that they indicated needed to be awarded by the end of the 2020 federal fiscal year. OSC then successfully reviewed and approved 14 construction contracts submitted by OGS by the September 30 deadline.
 - OSC worked diligently with the agencies subject to the new MOU agreement to develop implementation strategies to help ensure a smooth transition for agency staff unaccustomed to OSC's contract submission process. OSC held numerous meetings with the various stakeholders to identify upcoming projects subject to the MOU and address the agencies' specific concerns.
 - OSC provided outreach and support to agencies during the period of New York State on PAUSE, which enabled agency staff to continue to submit contracts while working remotely. Within two months' time, OSC on-boarded 29 agencies and provided digital training on the Electronic Document Submission System (EDSS)—a system that allows agency users to submit contracts and amendments electronically.
 - OSC scanned over 300 paper contracts on behalf of State agencies which allowed the State's business to continue as OSC auditors were able to review and approve contract transactions electronically.

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.

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- Ensuring contractors are aware of and are in compliance with required worker protections such as prevailing wage, Workers' Compensation and Disability Benefits 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.osc.state.ny.us/open-book-new-york>.)

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 risks 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 works with agency staff to ensure the business needs of the State are met while remaining aware of the importance of timely contracts for businesses and not-for-profit contractors.

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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