

Office of Operations Fall Conference 2020

Grants Best Practices



NYS COMPTROLLER
THOMAS P. DiNAPOLI

Welcome to

Grants Best Practices

With your hosts:

The OSC Bureau of Contracts Grants Team



Introduction

Agenda

- Introduction to OSC, BOC, and the Grants Team
- Summary of NYS Budget
- Summary of NYS Procurement
- Review of OSC best practices & processes
 - Procurements
 - Contracts
 - Miscellaneous points



Grants Team

Mission

The Grants Team reviews and approves procurement records and contracts resulting in State and federally funded grants to not-for-profit entities, NYS municipalities and for-profit entities serving NYS residents.



NYS Grants

Grant Description and Role of OSC

Grant: Contract awarded using State or federal funds primarily to not-for-profits and municipalities for the provision of human services.



OSC Bureau of Contracts

Statutory Authority and Guiding Principles

- State Finance Law Section 112
- Article 11 of the State Finance Law
- Public Authorities Law 2879-a

The Procurement Stewardship Act

- State Finance Law Article 11-B

Prompt Contracting

- State Finance Law Section 163 does not govern grants, but is a guiding principle



OSC Bureau of Contracts

Statutory Authority and Guiding Principles

State Finance Law Section 112.2(a)

The Bureau of Contracts is charged with the responsibility to review and approve contracts and purchase orders in excess of \$50,000



OSC Bureau of Contracts

Statutory Authority and Guiding Principles

Procurement Stewardship Act (PSA)

- OSC's goal is to balance the need to ensure open and fair competition
- OSC holds agencies accountable to the principles inherent in the PSA



OSC Bureau of Contracts

Statutory Authority and Guiding Principles

- Article 11-B of the State Finance Law on Prompt Contracting and Interest Payments for not-for-profit organizations
- Contracts with not-for-profit entities must be approved or non-approved by OSC within 15 calendar days



NYS Grants

Unique Nature of Grant Procurements

- Contracts are referred to as “program” contracts as they are usually associated with services that support the mission of an agency by ensuring that critical services are met
- Grant programs usually have multiple contracts associated with them
- “Grants” are not specifically defined in NYS law



NYS Grants

Grants vs. Non-Grants

Public Benefit or State Operations?

- Are services to be provided for the benefit of the public at large or for operations of the State agency?
- “Public at large” funds are generally 001 Aid to Localities appropriations in the State budget
- “Operations of the State” are generally 003 State Purpose Account appropriations in the State budget



Grant or Service Procurement?

Component	Service Contract	Grant Contract
Purpose of Funds	Services are being provided to support the operations of the agency.	Services are being provided to the public at large for a specific purpose which aligns with the state agency's mission.
Matching Requirements by Contractor	Does not contain matching requirements.	Frequently contains a matching requirement.
Evaluation of Cost	Typically best value.	Based on reasonableness of individual proposal and responsiveness to documented cost criteria.
Payment	Payment is made upon receipt of invoice for completed services. No advances are typically allowed.	Advances to non-profits are generally allowed up to 25%. Payments should be on a pre-defined schedule.
Additional Statutory Requirements	Subject to Tax Law, Consultant Disclosure and the Procurement Lobby Law.	Subject to Prompt Contracting Law.



NYS Procurement

Purpose & Process

- The purpose of State procurement is to facilitate each State agency's mission while protecting the interests of the State and its taxpayers and promoting fairness in contracting
- Through a variety of procurement procedures, a State agency and NFP negotiate, develop and sign a contract
- State agency submits contract to the Attorney General and Comptroller for approval



NYS Procurement

Procurement Process

Guiding principles for the Grants procurement process

- All applicants should know the rules and start on an equal playing field
- The procurement process should ensure that the best contractors are fairly and objectively selected
- There should be no appearance of favoritism
- All eligible applicants must be notified of funding opportunities
- In addition to advertising/marketing in the Contract Reporter all efforts should be made for comprehensive outreach



NYS Procurement

Procurement Process

Agency staff should submit a complete Procurement Record at least thirty days prior to the contract(s) start date to ensure sufficient time for approval and the timely execution of contracts (GFO XI.4.A)



Grant Procurement Records

Review Criteria

Documents required for OSC procurement record review should include, but are not limited to:

- Enacting legislation and current appropriation
- Proof of substantial compliance with solicitation requirements
- Comprehensive applicant/awardee list
- Award/Non-Award notification/debriefing/protest status
- Boilerplate contract



Grant Procurement Records

Review Criteria

Required Background Information

- Agency Contact Person, Phone & Email
- Agency Code/Agency Name
- Grant Program Title
- Eligible Applicants
- Contract Term
- Earliest Contract Start Date
- Latest Contract End Date
- Number of Contract Awards



Procurement Record Amendment

Criteria for Amending a Procurement Record

- Additional funding was received and all awards are increasing proportionately
- An awardee has declined their award and the procurement allows for funding of the next highest scoring applicant
- There was a substantive error with the initial submission



NYS Procurement

Determining Type of Grant Procurement

Based on the criteria and the funding guidelines, four methodologies are available for procuring grants

- Competitive Procurement
- Non-Competitive Procurement
- Contract Reporter Exemption Request (CRER)
- Legislative Line Item/Legislative Designation



Competitive Procurement

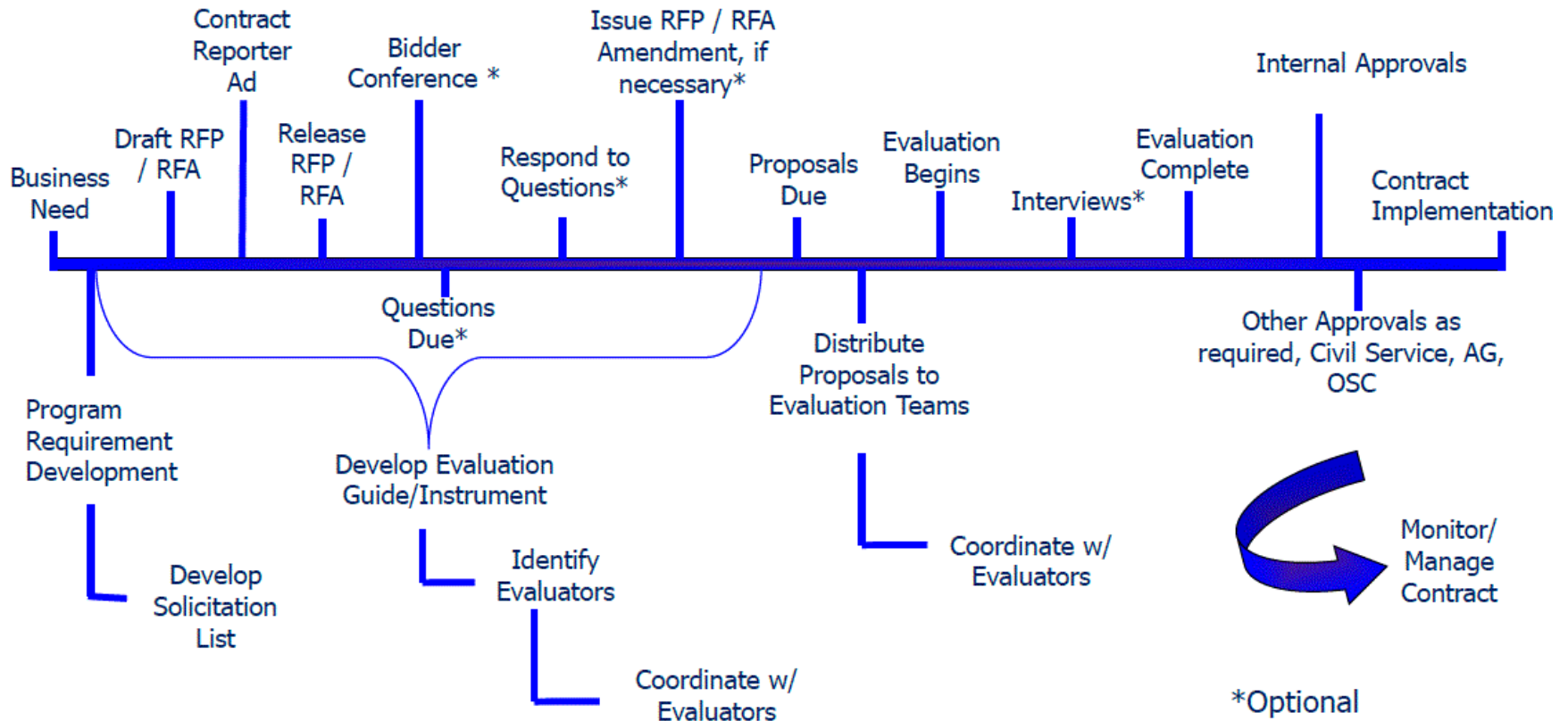
Competitive Procurement Process

- State agencies review all of the details involved in the competitive procurement and create an RFP/RFA for community distribution
- Elements of a Competitive Procurement
 - Planning
 - Development
 - Award Methodology
 - Evaluation Process



Competitive Procurement

Timeline



Competitive Procurement

OSC Guidance

Competitive Grants Procurement Checklist and Checklist Instructions

- Available in OSC's GFO XI.15.A
- Agencies are strongly encouraged to submit a completed copy of the checklist with the procurement record
- Guides agencies in providing the required documentation and assists OSC in performing a timely review of the information submitted



Competitive Procurement

Procurement Record Preparation

Documents to be sent to OSC in advance of contract(s):

- Legislative program authorization (enacting or enabling legislation)
- Budget appropriation (current fiscal year)
- RFP/RFA and blank application
- Certified Award Methodology and Evaluation Tool
- Award list in rank order with requested and allocated funds (including those not funded)
- Boilerplate contract including agency guidelines (payment advances, if applicable)
- Proof of advertising in the New York State Contract Reporter



Competitive Procurement

Evaluation Process Highlights

- Develop evaluation process and tool prior to the receipt of proposals
- Include in the RFP/RFA the methodology to follow for evaluating proposals
- Establish written guidelines and instructions for evaluators



Competitive Procurement

Evaluation Process Highlights

- Identify mandatory requirements, review criteria and consequences for proposals that fail to meet requirements
- Describe review of reasonableness of cost
- Ensure that at least 20% of the score addresses proposal cost



Competitive Procurement

Evaluation Scoring Variances and Normalizing Scoring

- There is no set number of evaluators
- The review criteria should be as objective as possible
- Same evaluators should evaluate all applications, if possible
- Training for evaluators should be consistent
- As a best practice agencies should have a plan to normalize variances



Competitive Procurement

Award Methodology Highlights

- What criteria will be taken into consideration when making the awards?
- How will criteria be scored or incorporated for awards?
- How will awards be made?
 - Highest score
 - Regionally
 - Based on other documented need



Non-Competitive Procurement

Characteristics

- Finite pool of eligible participants
- All eligible applicants are awarded
- Funding by formula
- Multiple awardees
- Procurements are either formula driven or legislatively directed



Non-Competitive Procurement

Required Documentation

- Enacting Legislation
- Appropriation
- Applicant/Award List
- Boilerplate Contract

Required Narrative

- Program Outline
- Eligible Audience Outline
- Funding Methodology Description



Contract Reporter Exemption Request (CRER)/Single Source

Authority, Definition & Characteristics

NYS Economic Development Law §142, 143, 144 and 145 establish guidelines

“The comptroller shall be responsible for granting or denying an exemption for each individual procurement contract...”

- Economic Development Law encourages competition “to the maximum extent possible”
- Requests must be approved by OSC prior to entering into a contractual agreement with any contractor



Contract Reporter Exemption Request (CRER)/Single Source

Characteristics

CRERs are requested by State agencies to create contracts that are not competitively bid

Examples:

- To extend existing contract when competitive procurement is not timely
- To add money or change the scope of an existing contract (when not part of an amended procurement record)
- To assign a contract which is not a result of a merger



Contract Reporter Exemption Request (CRER)/Single Source

Process

Mandatory components

- Description of the program, activity or services being procured
- Justification of selection
- Justification of the reasonableness of cost



Contract Reporter Exemption Request (CRER)/Single Source Process

Justification of Selection

- Clear explanation of circumstances leading to single source request, the selection of the vendor, including possible alternatives considered, and the unique nature of this specific vendor

Reasonableness of Cost

- Clear and substantiated documentation that shows how the determination was made that the contract amount is a reasonable expense for the State
- Comparisons to similar regions, comparisons to other relevant providers, comparisons to prior year's costs



Contract Reporter Exemption Request (CRER)/Single Source

CRER Explanations

- Some, and not all contracts are being modified
- Additional funding is granted in a manner different from that of the original procurement
- Agency received only 1 response to a Solicitation of Interest (SOI)



Contract Reporter Exemption Request (CRER)/Single Source

CRER Explanations

- Limited pool of authorized providers of services
- Interruption of provision of essential services would be detrimental to the community

Longevity of services from a particular vendor can not be the only justification for selection

NOTE: Best practice is to limit the term length of awards granted through CRERs so the State agency can re-assess provider availability



Legislative Budget Initiatives

Description

During the State's annual budget appropriation process, the Legislature may include specific items in the Executive Budget and assign the administrative responsibility for these items to State departments, agencies, or public authorities



Legislative Budget Initiatives

Direct Budget Line Items

- Agency is responsible for demonstrating that the contract is consistent with the purpose noted in the appropriation
- Direct line items without a named entity or clear distribution intent require a Legislative Initiative form or Legislative Letter of Intent for clarification



Legislative Budget Initiatives

Legislative Initiatives

- Legislative Initiatives that are from the Community Projects Fund – 007 allocation in the approved budget will have an “M” prefix for the contract number
- All legislative initiatives contracts and vouchers over \$50,000 must begin with the characters M00.
- All legislative initiatives contracts and vouchers under \$50,000 must begin with the characters TM00



Legislative Budget Initiatives

Legislative Line Item Allocation

- When a contract is supported with a line item allocation in the budget, that is not 007 funds, the contract will be assigned a “C” prefix
- Example of a Line Item Allocation

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OFFICE FOR THE AGING  
AID TO LOCALITIES    2020-21  
  
needs and preferences of all their resi-  
dents (10866) ..... 122,500  
For services and expenses of the New York  
state adult day services association, inc.  
related to providing training and techni-  
cal assistance to social adult day  
services programs in New York state  
regarding the quality of services (10867) ..... 122,500
```



Transaction Submission

Audit Types & prefixes

- **Audit Types**

- TGG (Paper Contract)
- GGA (Grants Gateway Electronic Contract)
- EGG (Direct Submission Electronic Contract)
- EPR (Electronic Procurement Record)
- ERG (Electronic Contract Reporter Exemption Request)
- XGG (Public Authority Grant)
- XFG (Public Authority Filed Only Grant)

- **Prefixes and Suffixes**

- C123456 (Paper Contract)
- C12345GG (Electronic Contract)
- M091234 (Member Item)
- S123456 (Individual Person)



Agency Submission of Contract

Resources & Guidance

OSC GFO §XI.2 - Comptroller Approval of Contracts and General Contracts Processing

- Process & document preparation guidance

NYS Procurement Rules & Guidelines

- General policies and procedures and related legislative requirements applicable to the New York State procurement process, best practices for grant procurements

ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf

its.ny.gov/nys-procurement-rules-and-guidelines



Encumbrance

OSC GFO §XI.2.C – Contract Funds Reservation

- OSC requires full encumbrance on all contracts for the period the appropriation is provided
 - April 1 – March 31 for State agencies, generally
 - July 1 – June 30 for SUNY & CUNY
- Includes Federal funds enacted through Aid to Localities Appropriations
- Must be inclusive of funding amounts from start date through the end of the current fiscal year



Encumbrance

OSC GFO §XI.2.C – Contract Funds Reservation

- Generally, contracts should be encumbered through the current fiscal year obligation
- Exceptions:
 - Community Projects Fund and Capital Projects appropriations must be encumbered for the full amount, with exceptions
 - Limited Funding Requests – AC3280-S required



Encumbrance

Limited Funding Request Reasons

- If the federal budget is not passed and the program is receiving funding through continuing resolutions
- If available federal funds do not correspond to the agency contract term (the term overlaps two Federal fiscal years or funds are released at intervals during the grant period)



Encumbrance

Limited Funding Request Requirements

- State agencies should submit their limited funding request in advance of the contract
- Information needed:
 - Memo explaining the situation
 - List of contract numbers, contractors, contract terms, and contract amounts
 - Expected liability through 3/31 & available funds reserved
 - Timeframes for balance of fund availability
 - Funding strategy matrix
 - Federal award letter



Contract Package

Vendor Responsibility

- OSC GFO §XI.16 - Vendor Responsibility information
- SFL §112 - State contracting entities award contracts only to responsible vendors
- State agency can build in safeguards to protect taxpayers' interests



Contract Package

Additional Vendor Responsibility Requirements

OSC GFO § XI.16 – Vendor Responsibility

Submission of a Vendor Responsibility Questionnaire and a State contracting entity vendor responsibility review are required for a subcontractor where:

- Subcontractor is known at the time of the contract award
- Subcontract will equal or exceed \$100,000 over the life of the contract



Contract Package

Charities Registration

Per Article 7-a of the Executive Law, contracts submitted for not-for-profit organizations which receive funding of \$25,000 or more must submit one of the following:

- Organization's charitable registration number and documentation from the AG's office that states that the vendor is up-to date with registration filing
- Statement from the contractor that the organization is exempt pursuant to one of the categories of the AG's exemption schedule



Contract Details

Standard Contract Language for Grant Contracts

Multi-Year Agreements are suitable for contracts for ongoing programs which are stable and predictable

- The agency must be able to predict the total amount for the entire term
- The scope of the contract must remain unchanged for the full period of the contract
- Budgets should remain consistent throughout the out-years (not applicable to rate-based and utilization-based budgets)



Contract Details

Standard Contract Language for Grant Contracts

Simplified Renewal Contracts

- Allow flexibility in establishing annual work plans and budgets
- Streamline annually required paperwork
- Give service providers increased confidence that the State intends to continue the contract past the initial period



Contract Details

Standard Contract Language for Grant Contracts

Amendment

- Any proposed increase in contract amount, term, or scope of work requires a contract amendment

No Cost Time Extension

- Should only be submitted at the end of a contract term and not occur in the middle of said term

Budget Modification

- Any change greater than 10% to a budget category must be submitted to OSC for approval



Contract Details

OSC Budget Modification Policy

NYSFL Art 11-B § 179-ee.3

“...where the amount of such modification is, as a portion of the total value of the contract, **equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars**, the Comptroller may require that such modification be submitted to him or her for review.”



Contract Details

Budget Review

Budget Lacking Sufficient Detail

Budget for the ABC Not-For-Profit Corporation

<u>Contract Cost Line Items</u>	<u>NYS Funding</u>
<u>Personnel Costs:</u>	
Total Personnel Salaries	\$308,500
Total Fringe Benefits	\$227,000
Total Personnel Costs	\$535,500
<u>Indirect Costs</u>	
20% of Personnel Costs	\$107,100
<u>Non-Personnel Costs:</u>	
Equipment	\$13,000
Materials & Supplies	\$63,000
Consultant/Contractor	\$1,100,000
Other	\$370,000
Total Non-Personnel Costs	\$1,546,000
Total Budget	\$2,188,600



Contract Details

Budget Review

Budget With Sufficient Detail

Budget for the ABC Not-For-Profit Corporation

Contract Cost Line Items

Position	FTE	Salary	NYS Funding	Materials & Supplies	NYS Funding
CEO	0.5	\$100,000	\$50,000	Copy Paper	\$50,000
CIO	0.5	\$80,000	\$40,000	Stamps & Envelopes	\$3,000
Researcher	0.75	\$78,000	\$58,500	Publications	\$10,000
Investigator	1	\$85,000	\$85,000		\$63,000
Investigator	1	\$75,000	\$75,000	<u>Consultant/Contractor</u>	
Total Personnel Salaries			\$308,500	BF Consultants	\$500,000
Total Fringe Benefits			\$227,000	Technologies R Us	\$100,000
Total Personnel Costs			\$535,500	Star Enterprises	\$500,000
					\$1,100,000
<u>Indirect Costs</u>				<u>Other Expenses</u>	
20% of Personnel Costs			\$107,100	Laboratory Fees	\$200,000
				Meetings	\$50,000
Non-Personnel Costs:				Outreach	\$100,000
<u>Equipment</u>				Training	\$20,000
3 Computers			\$3,000		\$370,000
2 Leased Vehicles			\$10,000	Total Non-Personnel Costs	\$1,546,000
			\$13,000	Total Budget	\$2,188,600



Contract Budget

State-Funded Administrative Costs and Executive Compensation

Executive Order 38

- As of April 1, 2015, no less than eighty-five percent of the State financial assistance or State-authorized payments to a provider for operating expenses shall be directed to provide direct care or services rather than to support administrative costs
- To the extent practicable, reimbursement with State financial assistance or State-authorized payments shall not be provided for compensation paid or given to any executive by such provider in an amount greater than \$199,000 per annum



Contract Budget

Indirect Cost Allocation

OSC GFO § XI.4.D provides guidelines for agencies and contractors for the equitable distribution of indirect costs

- Definition: “activities that benefit more than one program or objective and therefore cannot be identified to only a specific contract”
- Period for indirect costs is consistent with contract term
- Contractor applies cost methodology in a consistent manner (i.e. federal, state, local government or private funds)
- State will only reimburse its fair share



Contract Assignments

- OSC GFO §XI.12.B
 - Outlines the procedures to be followed by a State agency to execute the assignment of a contract to an entity other than the original contract holder.
- SFL Article 9, §138
 - Contracts cannot be assigned without the prior written consent of the contracting agency officials.
- Lien Law, Article 2, §16
 - Contract assignments must be filed with the originating agency and the Office of the State Comptroller within 20 days of the date of the assignment.



Attorney General Approval of Amendments

- OSC GFO §XI.4.B. Standard Contract Language for Grant Contracts: Fixed Term, Multiyear Contracts and Simplified Renewals
 - Generally not required for amendments
 - State agency should contact the AG prior to making any substantive changes to a grant contract, appendix or attachment
- If there is a question, contact the AG



Resources

- NYS Guide to Financial Operations
<https://www.osc.state.ny.us/agencies/guide/MyWebHelp>
- Grants Reform
<https://grantsmanagement.ny.gov>
- NYS Division of the Budget
<https://www.budget.ny.gov>
- NYS Office of General Services Procurement Services
<http://ogs.ny.gov/procurement>
- NYS Contract Reporter
<https://www.nyscr.ny.gov>
- Office of the State Comptroller Grants Team Email Box
BOCGrantsTeam@osc.ny.gov



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Help Us Help You

- Please provide sufficient contact information with your transaction
 - Name, phone number and email address of **primary** contact
 - Name, phone number and email address of an **alternate** contact
- Please respond to requests for information within three days



Thank You!



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