



## **OFFICE OF THE STATE COMPTROLLER**

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# **State Contracts by the Numbers: Longstanding Contract Oversight Authority Serves Taxpayers**

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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 prevent procurement abuses in New York State. In 1995, the Procurement Stewardship Act enhanced this long-standing oversight. The Act recognized the need for greater clarity in State procurement, and codified procedures modeled on the procurement policies of the Office of the State Comptroller (OSC). It also reaffirmed the importance of independent oversight by OSC to:

- Ensure that public money is used in the best interests of the taxpayers;
- Guard against favoritism, waste, fraud and corruption; and
- Facilitate the efficient acquisition of goods and services of the highest quality at the lowest cost.

The Governor and the Legislature further confirmed the importance of the State Comptroller's review and approval of contracts through the enactment of the Public Authorities Reform Act of 2009, which extended OSC oversight to certain public authority contracts.

### **The Importance of Independent Review**

While the New York State Constitution empowers the State Comptroller to protect taxpayers through the pre-and post-audit of expenditures, additional statutory powers grant the Comptroller oversight of contracts which drive billions of dollars in State spending. Uncovering problems after the fact is simply too late to have the most meaningful impact; at that point, taxpayer money has been spent, projects may have advanced and recovery is made difficult, and important programs and services could be negatively impacted.

Many respected audit organizations recognize that procurement is susceptible to abuse, and that an independent review can help deter fraud, waste and abuse while saving taxpayers' money:

- In a federal report by the General Services Administration on the agency's Government-Wide Contracts, Multiple Awards Schedules, and Benefits of Interagency Contracting Oversight (GSA), the GSA notes that "Past history has shown that for every dollar invested in pre-award contract reviews, at least \$10 in lower prices or more favorable terms and conditions are attained for the benefit of the government and the taxpayer." <http://www.gsaig.gov/?LinkServID=0C075DFF-9852-4C92-531A6D86ADEF4850&showMeta=0>, see page 2.
- Other studies suggest even more promising results. The GSA's Inspector General generates approximately \$160 in savings for every dollar spent on pre-award audits of contracts. According to the Government Accountability Office, pre-award audit led to the identification of nearly \$4 billion in potential savings from 2004 to 2008. <http://www.gao.gov/assets/310/303900.pdf>, see page 33.
- A report by the Organisation for Economic Co-operation and Development highlighted that procurement is the government activity most vulnerable to corruption, providing multiple opportunities for those involved to divert funds for private gain. Procurement is also a major economic activity where corruption has a potentially high negative impact on taxpayers. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=987026](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=987026), see pages 9-10.

### **Scope of the Comptroller's Contract Review**

The Office of the State Comptroller reviews and approves State agency contracts, generally those where the contract value exceeds \$50,000. The Comptroller may also review State public authority contracts valued at \$1 million or more if they are either non-competitive or paid from State funds. Centralized contracts are currently exempt from OSC oversight.

The Comptroller's contract review process adheres to rigorous standards and legal requirements to 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;
- Sufficient funds are available for the contract, and agencies do not over-commit spending; and
- Vendors are responsible and eligible for government contracting.

The independent review of contracts has a strong deterrent effect on waste, fraud and abuse in contracting, but it can also provide an additional benefit to

agencies by increasing leverage in negotiations with vendors who may otherwise attempt to take advantage of the State. For example, agencies can advise vendors that contracts require the approval of OSC and the parameters can be explained and used to support agency efforts to reduce costs and ensure favorable contract terms.

### **Contract Review Time Frames**

The average length of time for OSC contract review is approximately 11 to 13 days. By comparison, the process that precedes OSC review of most contract awards can stretch out months and sometimes years. Accordingly, OSC review is not a significant time factor in the full procurement life cycle.

#### *Results for 2013:*

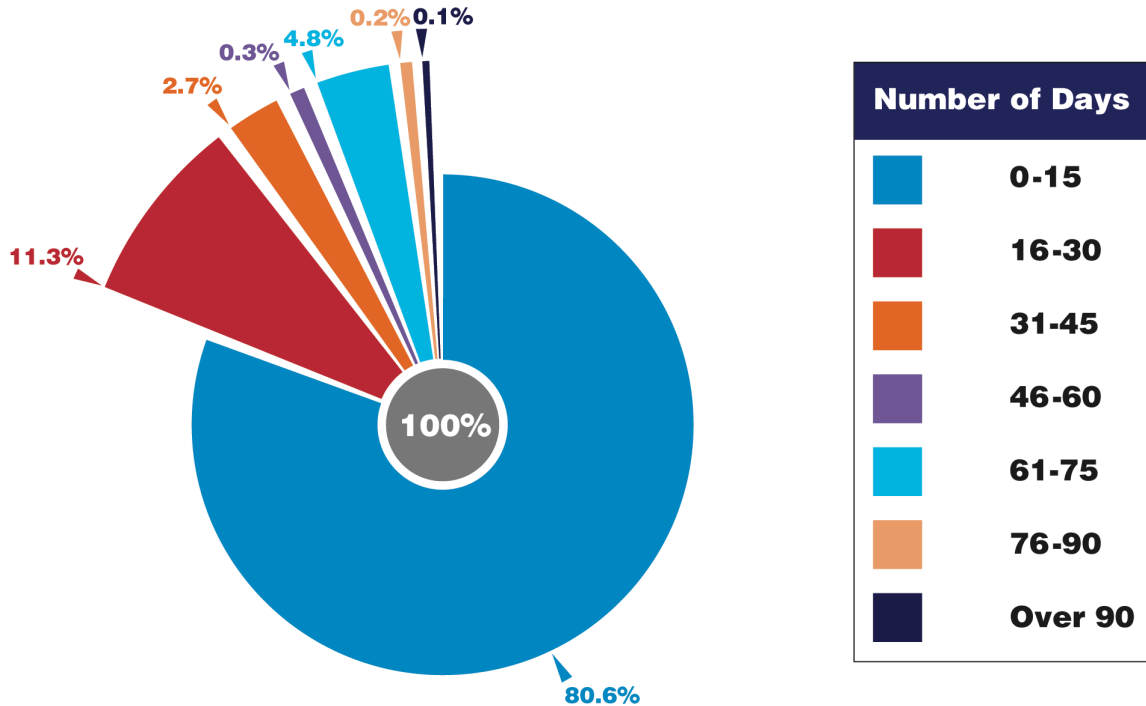
For the most recent calendar year, OSC received and acted on 22,794 transactions. The average time from submission to final sign-off was 11.2 days.

<b>Average Number of Days for Transaction Review Calendar Year 2013</b>		
Type of Transaction	Volume	Average Days for Review
New Contracts	8,584	13.4
Contract Amendments and Change Orders	14,210	9.8
<b>Total</b>	<b>22,794</b>	<b>11.2</b>

Over three-quarters of these transactions (79 percent) representing over 80 percent of the total contract dollar values were reviewed by OSC in 15 days or less, and an additional 15.8 percent were processed in 16-30 days.

# Contract Review Time Frames

## As Percentages of Total Contract Value 2013



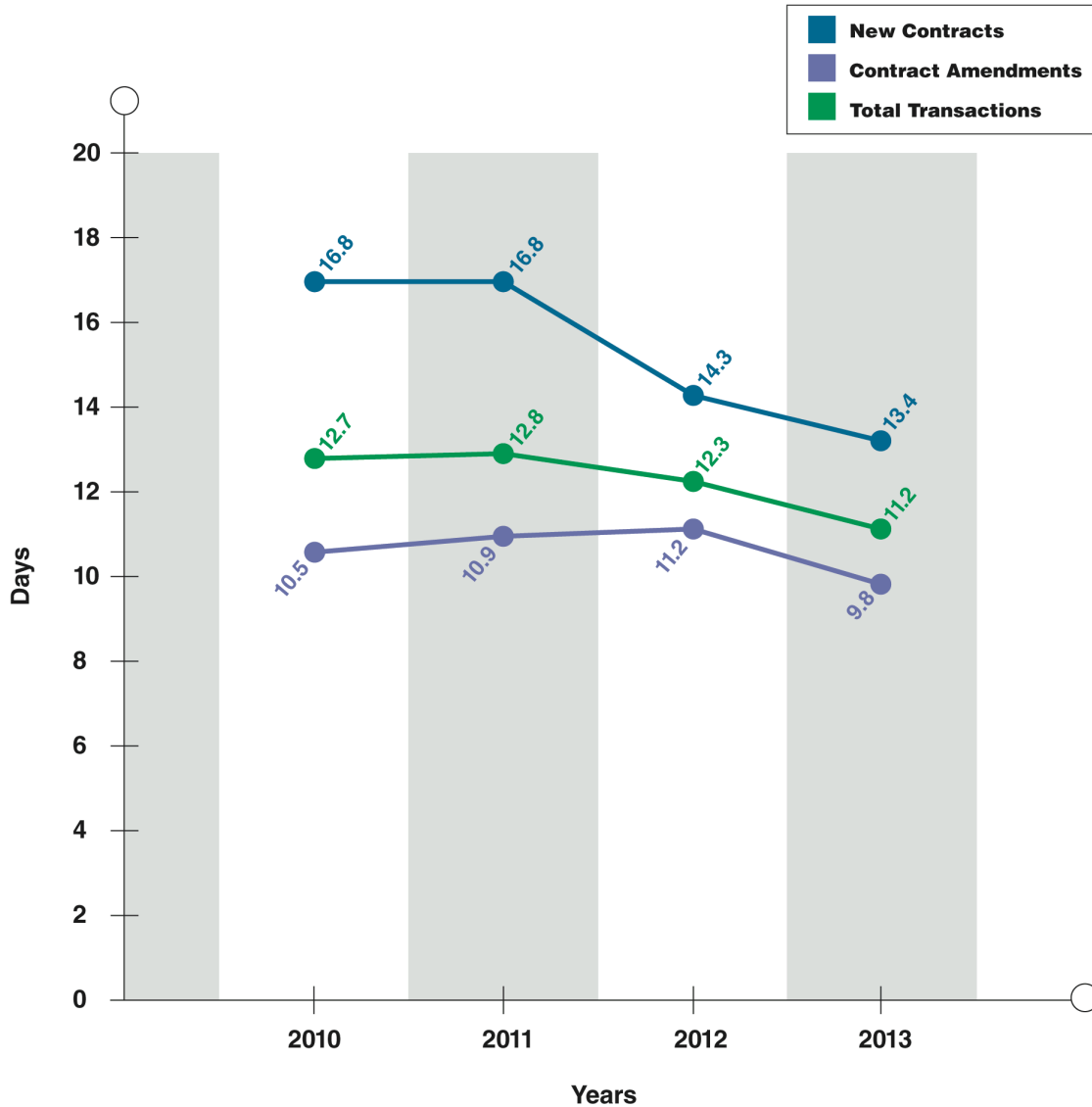
Days	Contract Transactions	Percentage	Amount (\$ Billions)	Percentage
0-15	17,945	78.7%	\$ 88.0	80.6%
16-30	3,609	15.8%	\$ 12.3	11.3%
31-45	899	4.0%	\$ 3.0	2.7%
46-60	234	1.0%	\$ 0.3	0.3%
61-75	64	0.3%	\$ 5.2	4.8%
76-90	41	0.2%	\$ 0.2	0.2%
Over 90	2	0.0%	\$ 0.1	0.1%
<b>Total</b>	<b>22,794</b>	<b>100%</b>	<b>\$109.1</b>	<b>100%</b>

### Comparison with Prior Years:

A comparison of results for the three prior years shows overall improvement in review timeframes and 2013 review times are the lowest in recent years.

# Contract Review Time Frames

## Average Days for Contract Review 2010–2013



Transaction Type	2010		2011		2012	
	Volume	Average Days for Review	Volume	Average Days for Review	Volume	Average Days for Review
New Contracts	10,641	16.8	9,103	16.8	8,363	14.3
Contract Amendments and Change Orders	19,552	10.5	18,801	10.9	15,600	11.2
<b>Total</b>	<b>30,193</b>	<b>12.7</b>	<b>27,904</b>	<b>12.8</b>	<b>23,963</b>	<b>12.3</b>

## **Benefits of OSC Contract Review**

The Comptroller's independent review of contracts protects taxpayers, agencies and vendors by validating that costs are reasonable, ensuring that terms are favorable to the State, maintaining a level playing field for bidders, and stopping waste, fraud or abuse before it can take place. At the same time, OSC is responsive to agency deadlines and is sensitive to the business needs of the State. Below are recent examples demonstrating the value added by OSC in particular procurements:

- In 2012 and early 2013, OSC collaborated with the Thruway Authority to expedite the \$3.1 billion Tappan Zee Bridge Replacement contract in order to meet tight construction deadlines. OSC reviewed components of the procurement as they were completed rather than waiting to review all aspects at once when everything was finalized. This novel model allowed the team, in concert with the Authority, to identify and resolve issues in a timely fashion that could have delayed the project.
- OSC expedited the review of dozens of Department of Health contracts in 2013 to ensure the on-time implementation of the NY Health Exchange, which was required under federal law to be operational by October 1.
- OSC assisted the Division of State Police when it was facing a critical shortage in ammunition during summer 2013. There was no approved centralized contract at the time, and the State Police proposed using an Albany County contract. OSC researched other vendors and found better pricing, saving the Division more than \$133,000.
- OSC helped the Office of Mental Health save more than \$400,000 for Oracle Business Intelligence Enterprise Edition (OBIEE) staffing with KMQ Enterprises in summer 2013 when the vendor tried to negotiate inappropriate rate increases after the contract award.
- In July 2013, OSC rejected a non-competitive contract between Roswell Park Cancer Institute and Navigant Consulting to implement hospital financing and restructuring recommendations previously developed by Navigant. The contract included unfavorable terms for the State, including cost escalators that would far exceed the estimated \$3 million contract value, and created "revolving door" concerns with a former hospital official. Roswell agreed to rebid the work competitively.
- In Fall 2013, OSC found savings of \$113,000 for the Department of Transportation in a settlement claim that included payments for periods not covered under the terms of the contract.
- During contract review in March 2012, OSC found better pricing on school buses in another state than the price offered to New York State. OSC worked with the Office of General Services to negotiate lower prices, conservatively saving an estimated \$9 million over the life of the contract.

- In 2011, the Office of General Services awarded a \$14.4 million fuel contract to Chief Energy Corporation, but OSC's review uncovered allegations that the principal of Chief Energy had ties to organized crime. These vendor responsibility issues forced Chief Energy to withdraw its bid, and the contract was awarded to the next lowest responsible bidder.
- The Metropolitan Transportation Authority proposed a \$118 million radio upgrade contract in 2011 with SAIC, which at the time was under scrutiny regarding its performance under New York City's CityTime Information Technology consulting contract. OSC refused to approve the contract without a more thorough vendor responsibility review. MTA/NYC Transit ultimately rebid the contract and awarded it to a firm that was \$13 million less expensive than SAIC.

Other governments that do not have an independent contract review process in place are now exploring the need for this important check. For example, in January 2012, the New Jersey Governor's Office ordered a complete review of state purchasing laws and public contract processes after a report by the New Jersey Comptroller's Office found errors and illegal provisions in one out of every five contracts worth \$2 million to \$10 million. Among the New Jersey contracts of \$10 million annually or more, one in three broke laws designed to ensure fairness in procurement. New Jersey's Comptroller screens the proposed vendor selection process for all state contracts of \$10 million or more and post-audits contracts valued between \$2 million and \$10 million to determine if they were awarded in compliance with New Jersey laws and regulations. The 2012 report documented significant errors in at least 20 percent of the contracts reviewed. [http://www.nj.gov/comptroller/news/docs/press\\_annual\\_report\\_2012.pdf](http://www.nj.gov/comptroller/news/docs/press_annual_report_2012.pdf)

In a February 15, 2013 letter to the editor, Florida's Chief Financial Officer wrote: "Last fiscal year, my office conducted 600 audits of contracts and agreements and found that 276 did not contain common-sense contracting standards — that's 46 percent. Considering this sampling, we are faced with the potential that nearly \$23 billion could be at risk because of poorly written or badly managed contracts. I am calling for the Legislature to require a pre-audit of high-value contracts to ensure that they contain elements that protect taxpayer dollars such as a precise scope of work, clearly defined deliverables, minimum performance standards and financial consequences for failure to deliver goods and services." <http://www.theledger.com/article/20130215/EDIT02/130219606>

## **Conclusion**

The independent review of contracts is a strong deterrent to waste, fraud and abuse in contracting. The State Comptroller is able to perform this function for the benefit of taxpayers, vendors and State government without unduly delaying the procurement cycle. OSC is responsive to urgent agency deadlines and is sensitive to the business needs of the State. The Comptroller's independent review of contracts ensures that costs are reasonable and that contract terms are favorable to the State, while helping maintain a level playing field for bidders. Other governments that do not have an independent contract review process in place are now exploring the need for this important money-saving function.

The State Comptroller is committed to improving OSC's role in the procurement cycle and is actively considering statutory and regulatory changes that, if adopted, will help ensure that State procurements deliver the highest value to citizens of New York State.