

OFFICE OF THE STATE COMPTROLLER

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State Contracts by the Numbers: Averaging Just 11.6 Days, OSC Contract Review is Cost-Effective Taxpayer Protection

April 2015

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 longstanding oversight authority. The Act recognized the need for greater consistency, rigor and 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 independent 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-audit and post-audit of expenditures, the Comptroller has also been given additional statutory powers to oversee contracts which drive billions of dollars in State spending. This oversight authority enables the Comptroller to identify and address potential problems with a procurement early in the process. Uncovering problems after the fact would simply be 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. For example:

- In a federal report by the General Services Administration (GSA) on the agency's Government-Wide Contracts, Multiple Awards Schedules, and Benefits of Interagency Contracting Oversight, 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 audits 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, see pages 9-10.
- In answer to those who would rely on after-the-fact auditing, Kinney Poynter, Executive Director of the National Association of State Auditors, Comptrollers and Treasurers, notes that: "It's the old pay and chase model. . . . You pay the vendors and then you have to chase them. But afterwards, it's too late. The best internal controls are those in place up front and continuously enforced." Elliott Sclar of Columbia University also finds that contracts are usually regulated at the end. He says: "Often, it's the auditors who come in and find some abuse. . . . And at that point everyone is scrambling around, but you didn't get what you paid for, and it's too late. "Your Tax Money Wasted When No One Watches State Contracts," published by *The Fiscal Times*. <http://www.thefiscaltimes.com/Articles/2014/08/05/Your-Tax-Money-Wasted-When-No-One-Watches-State-Contracts#sthash.nznUncIB.dpuf>

New York State is not alone in requiring a risk-based, independent, pre-audit of certain contract transactions *before* they are considered binding:

- Connecticut's State Comptroller has required pre-audit of purchases exceeding a threshold amount since 2004. <http://www.osc.ct.gov/2014memos/numbered/201411.htm>

- Michigan requires pre-approval by the State Administrative Board of most new contracts valued at \$250,000 or more.
http://www.michigan.gov/documents/micontractconnect/0620.03_-_01_13_2014_444932_7.pdf
- Nevada requires review and approval by the Board of Examiners for contracts exceeding \$50,000. Contracts of any amount with current or former employees require BOE approval. The Board of Examiners consists of the Governor, the Secretary of State and the Attorney General, each independently elected officials.
<http://budget.nv.gov/uploadedFiles/budgetnvgov/content/Documents/State%20Administrative%20Manual.pdf>, see page 20.

Scope of the Comptroller's Contract Review

The Office of the State Comptroller reviews and approves most 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 awarded noncompetitively or paid from State funds. Centralized contracts are currently exempt from OSC oversight.

The Comptroller's contract review process adheres to rigorous standards 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 commit to greater spending than is authorized; 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 their 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 of the contract review can be explained and used to support agency efforts to reduce costs and ensure favorable contract terms.

Contract Review Time Frames – – A Fraction of the Total Contract Process

The average length of time for OSC contract review is between 10 and 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 2014 Demonstrate Cost Effective Oversight

OSC received 23,591 contract transactions valued at \$44.4 billion, both new contracts and contract amendments, in the 2014 calendar year. The average time from submission to final sign-off was 11.6 days.

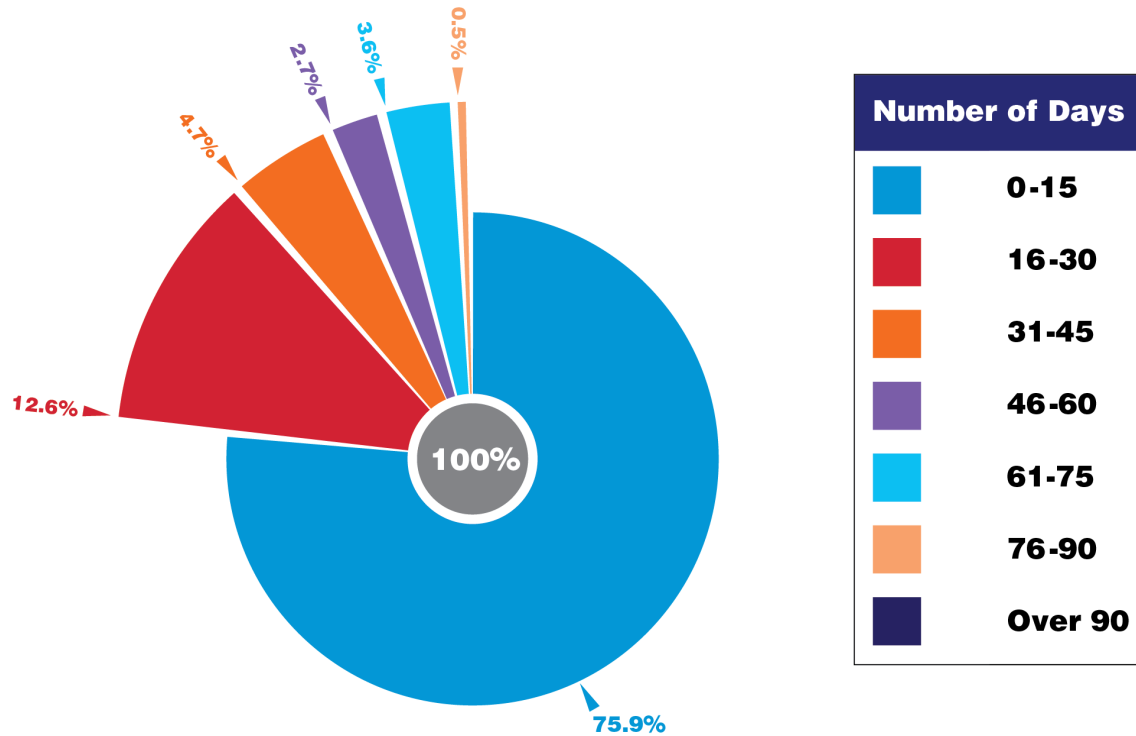
Average Number of Days for Transaction Review Calendar Year 2014		
Type of Transaction	Volume	Average Days for Review
New Contracts	9,853	13.2
Contract Amendments and Change Orders	13,738	10.5
Total	23,591	11.6

Over three-quarters of these transactions (78.5 percent), representing over 75 percent of the aggregate contract dollar value, were reviewed by OSC in 15 days or less. An additional 15.6 percent were processed in 16 to 30 days.

Where contract review exceeds anticipated timeframes, a variety of factors can affect the total time. These range from avoidable agency errors and omissions in the submission (lack of required signatures, missing documents) to highly complex procurements with multi-stage evaluations and/or complex scoring that are carefully reviewed to ensure all vendors receive a fair opportunity. In some cases, vendor responsibility issues or bid protests become central to the outcome and may entail additional legal research before review is complete.

Contract Review Time Frames

As Percentages of Total Contract Value 2014



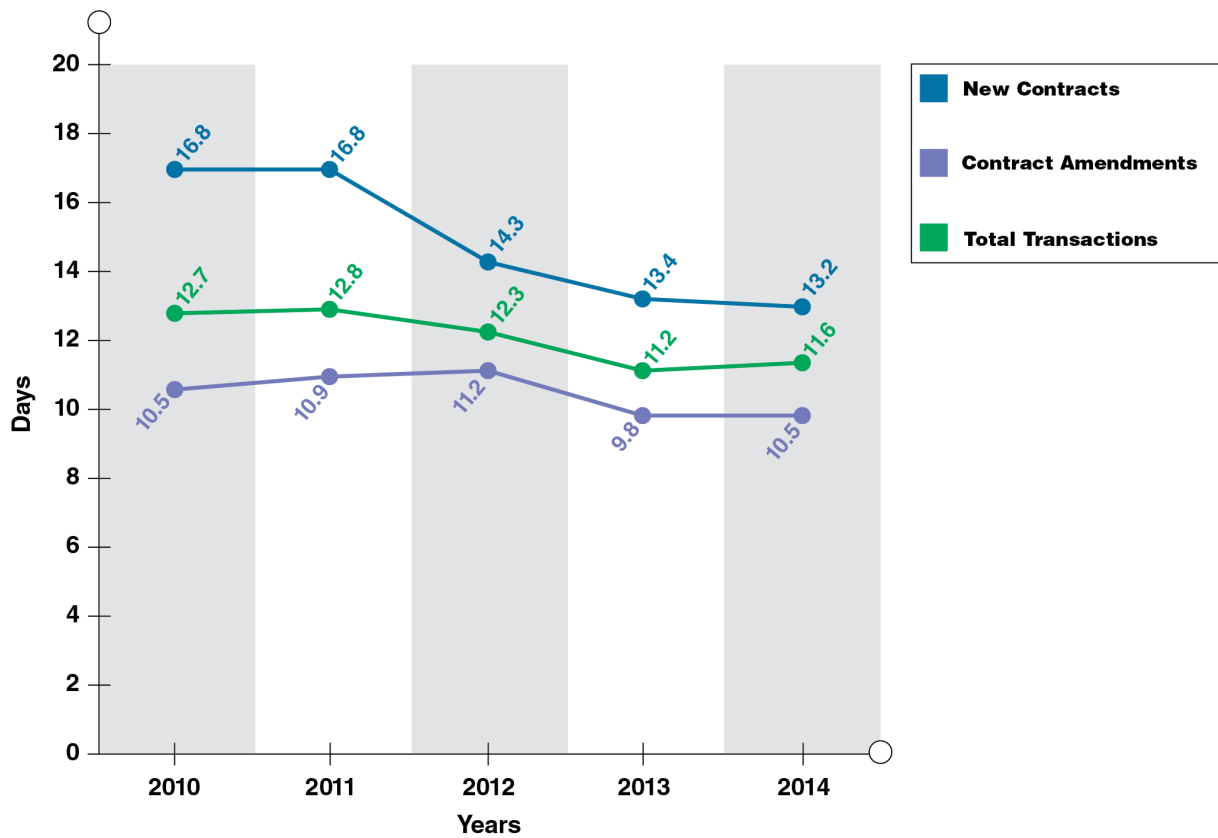
Days	Contract Transactions	Percentage of Total Contracts	Amount (\$ Billions)	Percentage of Total Value
0-15	18,526	78.5%	\$ 33.7	75.9%
16-30	3,673	15.6%	\$ 5.6	12.6%
31-45	941	4.0%	\$ 2.1	4.7%
46-60	304	1.3%	\$ 1.2	2.7%
61-75	114	0.5%	\$ 1.6	3.6%
76-90	30	0.1%	\$ 0.2	0.5%
Over 90	3	0.0%	\$ 0.0	0.0%
Total	23,591	100%	\$44.4	100%

Comparison with Prior Years

A comparison of results for the latest five calendar years shows overall improvements in review time frames for the period, including new contracts and amendments.

Contract Review Time Frames

Average Days for Contract Review 2010–2014



Transaction Type	2010		2011		2012		2013		2014	
	Volume	Average Days for Review	Volume	Average Days for Review	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	8,584	13.4	9,853	13.2
Contract Amendments and Change Orders	19,552	10.5	18,801	10.9	15,600	11.2	14,210	9.8	13,738	10.5
Total	30,193	12.7	27,904	12.8	23,963	12.3	22,794	11.2	23,591	11.6

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 contract audits:

Preventing Fraud, Waste, and Abuse and Protecting Taxpayer Dollars

- DOH added \$435 million to a contract with Maximus through amendments not subject to competitive bidding or OSC approval. An examination of expenditures revealed that Maximus had charged DOH a profit rate higher than its publicly reported rate, an unreasonable rate for general and administrative expenses, and travel expenses higher than the federal per diem rates. Based on recommendations from OSC, DOH negotiated \$21 million in savings over the life of the contract. Had this contract come before OSC before the award, these issues could have been addressed before any expenditures were made.
- During a 2013 pre-review of a contract between the Department of Health (DOH) and the American Academy of Pediatrics, OSC questioned the use of the contract and associated costs, which led to a felony guilty plea from the contractor, George Dunkel, in 2014. Guilty of misappropriating more than \$110,000 intended to promote childhood immunization, the former executive director of the nonprofit was expected to serve 30 days in jail, serve five years' probation and make full restitution.
- OSC reviewed a \$4.7 million Department of Transportation (DOT) contract for bridge painting and found the vendor, Limnes Corporation, Inc., had failed to disclose that an affiliated vendor was debarred by the Department of Labor. OSC rejected the contract and, after subsequent DOT investigation, Limnes agreed to retain an independent integrity monitor to oversee compliance with prevailing wage laws, enabling the contract to proceed.
- OSC's review of a settlement payment by DOT to a construction vendor uncovered claims for pay items outside the settlement period, resulting in savings of almost \$225,000.
- In 2014, OSC helped the City University of New York save more than \$236,000 on contracts for the Clean Room Tool Installation at the Advanced Science Research Center of the City College of New York.

- SUNY Upstate Medical University submitted a \$3.3 million noncompetitive medical equipment maintenance contract. Based on OSC review, SUNY Upstate was able to negotiate a nearly \$162,000 (5 percent) reduction to the contract amount.
- After OSC questioned rates for training services, the Department of Motor Vehicles negotiated savings estimated at \$440,000 over the five-year term of the agreement.
- OSC identified savings of nearly \$444,000 (7 percent) on a \$6.5 million Office for People With Developmental Disabilities (OPWDD) contract for the study of a care coordination system, and helped OPWDD ensure that computer equipment bought with contract funds would be transferred to the State at the end of the one-year contract.
- OSC questioned a \$420,000 contract for the Office of Alcoholism and Substance Abuse Services (OASAS) with a substance abuse treatment provider when auditors found an open investigation by the Office of the Attorney General (AG), and the provider's financial information showed a \$6 million net loss. Two days later, the AG announced the arrest of the vendor's executives on charges including fraud and grand larceny. OSC then worked with OASAS to transition the services to other qualified vendors.
- Findings from a 2011 OSC pre-audit of amendments to contracts between the DOH and the Cancer Services Network (CSN) culminated in 2014 with the Executive Director of CSN sentenced to one year in jail for "skimming \$360,000 in government funds earmarked for cancer screenings for the poor." He was also required to forfeit almost \$360,000 and undergo gambling counseling.

Responsive, Customer Service Oriented

OSC expedited review or approved alternative processes to facilitate critical projects:

- Within hours of DOT's request, OSC expedited review and approval of an \$8.2 million debris removal contract so that the services would be available for clean-up during and after a mid-February 2014 snowstorm.
- Within three days of a request by the Office of General Services (OGS), OSC expedited review and approval of four contracts, valued at \$38.8 million, for a high-priority building project on the Harriman State Office Campus.
- DOT asked OSC to expedite review of a \$41 million design/build contract to replace bridges over a reservoir in Niagara County. It was critical to complete certain aspects of the project during the winter while the turbines at the dam were shut down. OSC completed its review of the complex project in 10 business days.

- In 2014, OSC supported OGS efforts to mitigate delays for a State Preparedness Training Center for first responders. The construction was delayed once when the planned building site was used to support Superstorm Sandy response. OSC approved OGS's request to reduce time frames for change orders and make payments during the course of the project when OGS implemented strong executive oversight and internal controls.
- Because OSC had worked with DOT in advance of receiving the contract, auditors were able to approve a critical \$555 million design-build project for Kosciusko Bridge Replacement within 3 days of receipt of the final contract.

Ensuring a Level Playing Field

- The Office of Parks, Recreation and Historic Preservation (Parks) submitted a \$1.5 million agreement for architecture and engineering work. OSC review found that the vendor did not have the appropriate authorization from the State Education Department to perform engineering work in New York State. Parks subsequently re-bid the contract and obtained a qualified vendor. The original winning bidder was hired as a subcontractor whose role was limited to landscape architecture.
- The State University of New York at Stony Brook wanted to transfer a temporary medical staffing contract from an incumbent to a new vendor because the original vendor had ceased business operations. OSC found the new entity was affiliated with the incumbent vendor and its owner—doing business out of the same location with the same staff—and the incumbent company and owner were known to have had tax issues. OSC rejected the contract for vendor responsibility issues.

Other governments that do not have an independent contract review process in place have recognized the value that it could bring for their taxpayers. 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. More recently, a 2014 report documented continued defects, with significant errors in 27 percent of the contracts reviewed post-award. Additionally, corrective action was taken to modify the selection process in an additional 83 out of 129 contracts valued at \$10 million or more.

http://www.nj.gov/comptroller/news/docs/press_annual_report_2012.pdf

http://nj.gov/comptroller/news/docs/2014_osc_annual_report.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.