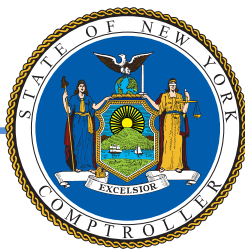


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# State Contracts by the Numbers

2017 Calendar Year

OSC Contract Review  
Protects Taxpayer Dollars



**OFFICE OF THE NEW YORK STATE COMPTROLLER**

Thomas P. DiNapoli, State Comptroller

**MARCH 2018**



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# Introduction

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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 1995, the Procurement Stewardship Act enhanced this longstanding oversight authority and codified statewide procurement procedures modeled on the longstanding policies of the Office of the State Comptroller (OSC).<sup>1</sup> It also reaffirmed the importance of independent oversight by OSC to:

- Safeguard public money and make sure taxpayer interests are protected;
- 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 the State Comptroller's contract review authority to include certain public authority contracts in excess of \$1 million.<sup>2</sup> However, beginning in 2011, centralized contracts let by the Office of General Services (OGS), as well as certain contracts of the State University of New York (SUNY) and the City University of New York (CUNY), were removed from OSC oversight, and other contracts have been exempted through provisions adopted in the annual budget process. As a result, in State calendar year 2017, State agencies awarded over \$3 billion in contracts without the benefit of the Comptroller's pre-review oversight.

The Comptroller's independent review of contracts protects taxpayers, agencies, not-for-profit organizations contracting with the State and other vendors by validating that a contract's costs are reasonable, that its terms are favorable to the State, and that a level playing field existed for bidders. Independent review also serves as an important deterrent to waste, fraud and abuse. 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. This legislation (S.3984-A /A.6355-A) would restore and expand certain of the Comptroller's powers to oversee contracts, but has not yet been enacted.

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<sup>1</sup> Laws of 1995 (Chapter 83, Section 33, as amended).

<sup>2</sup> Laws of 2009 (Chapter 505, Section 14, as amended).

# The Importance of Independent Review

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While 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 (currently Section 112 of State Finance Law).

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. The Comptroller's review of contracts is also a strong deterrent to fraud and abuse.

OSC's review of contracts is preceded by an independent review as to form by the State's attorney—the Office of the Attorney General (AG). When OSC's authority to review contracts is removed, the additional AG oversight is also removed. 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 SUNY hospital contracts where medical malpractice claims and the security of personal information are potential factors.

# Scope of the Comptroller's Review

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OSC 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. In addition, OSC must approve any request for exemption by a State agency which has a statutory obligation to advertise a procurement opportunity in the New York State Contract Reporter and carry out a competitive bid. Centralized State agency contracts, as well as certain contracts of SUNY and CUNY, are currently exempt from OSC oversight as the result of statutory action in 2011 and 2012.

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;
- 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. 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 therefore pricing and terms need to be justified and acceptable to the Comptroller. This is routinely done to support agency efforts to reduce costs and ensure favorable contract terms.

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

- A former University at Buffalo maintenance supervisor pleaded guilty in 2017 to taking as much as \$100,000 in bribes from a painting contractor in exchange for helping the contractor win painting contracts for student living facilities at the school totaling over \$1 million. <https://ig.ny.gov/sites/default/files/pdfs/YerryPleaPR2-21-17.pdf>

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- A recent OSC examination of spending on consultants by SUNY Downstate Medical Center found that the Center eliminated important cost controls in a contract, resulting in questionable expenses and ethical lapses, including pricey hotel rooms, inappropriate meal expenses, limousine drivers and reimbursement for alcohol. Another OSC examination of this same consultant found that the consultant did not use sound methodologies to calculate cost savings, which was partially attributable to the Center's poorly written contracts.  
<http://osc.state.ny.us/audits/allaudits/bseaudits/bse20160808.htm>  
<http://osc.state.ny.us/audits/allaudits/bseaudits/bse20180214.htm>
  - The Department of Health (DOH) negotiated a \$435 million consultant contract related to the New York Health Benefit Exchange that was exempt from both competitive bidding and OSC pre-review. The contract included no detailed budgets, rate schedules or other common sense provisions limiting the amounts the consultant could charge, and allowed for an excessive profit. After OSC brought this to light, DOH accepted OSC's recommendations and renegotiated the contract, saving approximately \$21 million.  
<http://osc.state.ny.us/audits/allaudits/bseaudits/bse20140506.htm>

The law that removed OGS centralized contracts from OSC pre-review has exempted a growing number of high-value consultant contracts from independent oversight. These include more than 100 information technology consultant contracts worth billions of dollars. By law, State agencies must use these contracts, but they are also widely used by local governments and school districts. Without assurance that fair, competitive rates are achieved, State and local taxpayers could pay more than necessary.

The expanding use of centralized contracts that are exempted from OSC's independent review and cover a wide array of goods and services increases the risk that a significant percentage of State contracts will not benefit from independent oversight. In calendar year 2017, OGS let approximately \$2.17 billion in contracts not subject to OSC oversight.

In 2017, in the wake of several State procurement scandals, Comptroller DiNapoli introduced legislation that would restore and expand certain OSC contracting oversight powers.



# Contract Review Time Frames

In 2017, the average length of time for OSC contract review was 7.5 days. This reflects averages of 5.6 days for contract amendments and 10 days for new contracts. Almost 90 percent of all contracts submitted to OSC for review were processed within 15 days. By comparison, the agency procurement process (including bid development, solicitation, evaluation, contract negotiation and award) that precedes OSC review can stretch out for months and sometimes years. Accordingly, OSC review is not a significant time factor in the full procurement life cycle.

## Results for 2017 Demonstrate Cost-Effective Oversight

### Average Review Time

OSC received 20,867 contract transactions, including both new contracts and contract amendments, valued at \$88.37 billion in the 2017 calendar year. As noted, the average time from submission to final sign-off was 7.5 days.

Average Number of Days for Transaction Review – Calendar Year 2017			
Type of Transactions	Number	Average Days for Review	Total Value
New Contracts	9,027	10.0	\$62.77 billion
Contract Amendments and Change Orders	11,840	5.6	\$25.60 billion
<b>Total</b>	<b>20,867</b>	<b>7.5</b>	<b>\$88.37 billion</b>

### Contract Review Time Frames

While State law allows OSC 90 days to review contracts, approximately 89 percent of transactions reviewed in 2017, representing over 84 percent of the aggregate contract dollar value, were reviewed by OSC in 15 days or less. An additional 7.7 percent, representing 4.3 percent of the total value of contracts, required 16 to 30 days for processing.

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 (lack of required signatures, missing documents, etc.) to procurements with multistage evaluations and complex scoring that must be reviewed carefully to ensure all vendors received a fair opportunity to participate. 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.

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In other cases, vendor responsibility issues or bid protests become central to the outcome, and may entail additional legal review before a contract can be approved.

OSC's independent review of bid protests provides a valuable appeal process for the contracting community and can help alleviate the risk of time-consuming lawsuits. 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>.)

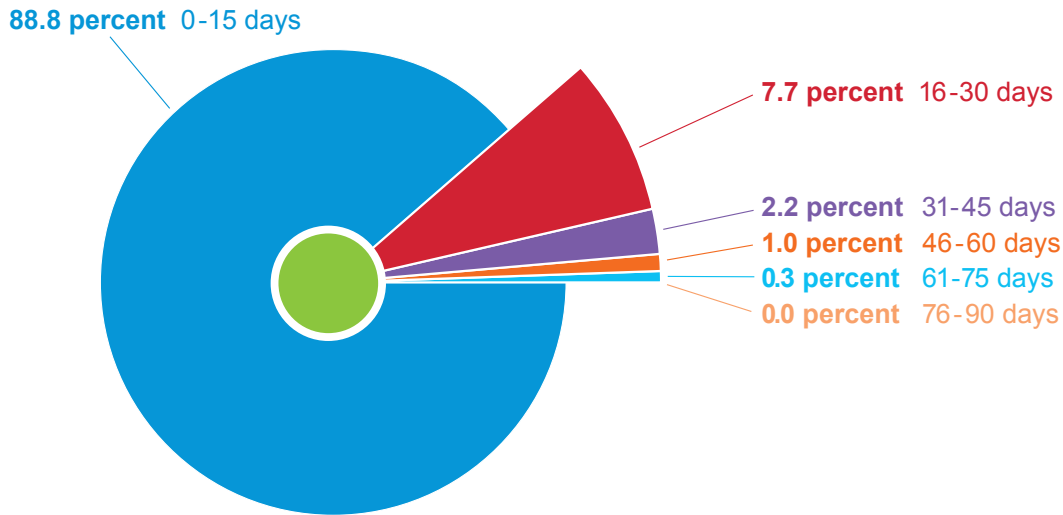
Recently, OSC upheld a protest to a Department of Transportation (DOT) procurement for technical assistance, administrative services and oversight for the New York State Fixed Guideway System Safety and Security Oversight program. OSC agreed with the protester that the winning bidder's proposal was nonresponsive to the bid specifications and that DOT had improperly allowed the winning vendor to materially alter its bid after the bid opening.

In instances where OSC oversight has been removed, OSC is unable to perform its independent review of any issues raised by other vendors who feel the procurement process was not fair. For example:

- OSC had no authority to review a SUNY Buffalo State campus procurement for a content creation and media management system despite a bidder raising what appeared to be valid concerns, including questions involving the awarded value. OSC could only refer the issue back to SUNY for review.
- OSC received bid protests on multiple procurements by the Office of Information Technology Services for printers purchased through an OGS centralized contract, but was unable to review the protests because OSC's oversight authority to review centralized contracts had been removed in 2011.

## Contract Review Time Frames

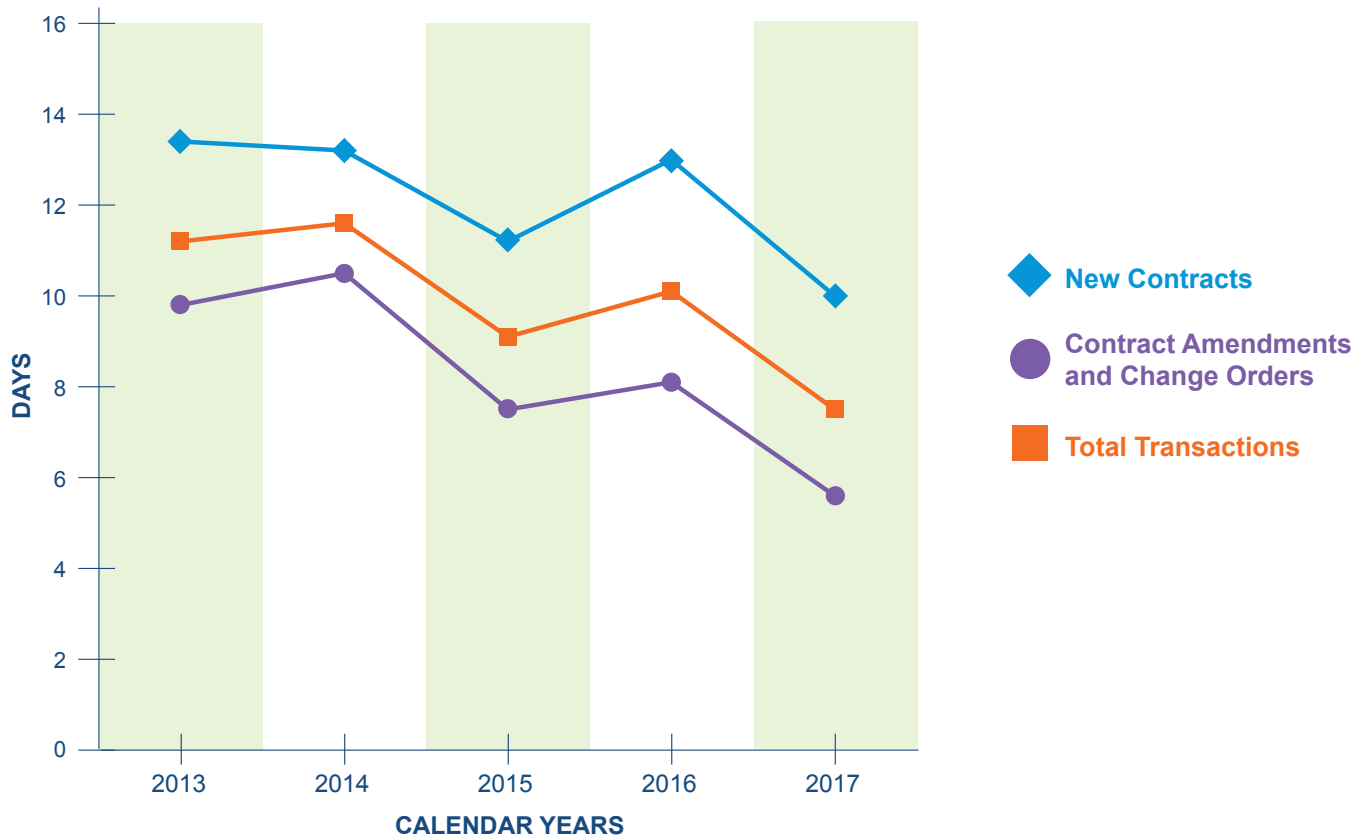
As a Percentage of Total Contracts 2017



Days	Contract Transactions	Percentage of Total Contracts	Amount (\$ Billions)	Percentage of Total Value
0 – 15	18,521	88.8%	\$74.5	84.3%
16 – 30	1,616	7.7%	\$3.8	4.3%
31 – 45	463	2.2%	\$3.1	3.5%
46 – 60	208	1.0%	\$5.1	5.8%
61 – 75	53	0.3%	\$0.4	0.5%
76 – 90	6	0.0%	\$1.4	1.6%
<b>Total</b>	<b>20,867</b>	<b>100.0%</b>	<b>\$88.3</b>	<b>100.0%</b>

## Contract Review Time Frames Trends

Average Time for Contract Review 2013– 2017



Transaction Type	2013		2014		2015		2016		2017	
	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
Contracts	8,584	13.4	9,853	13.2	9,099	11.2	8,831	13.0	9,027	10.0
Contract Amendments and Change Orders	14,210	9.8	13,738	10.5	12,282	7.5	12,817	8.1	11,840	5.6
Total	22,794	11.2	23,591	11.6	21,381	9.1	21,648	10.1	20,867	7.5

# Benefits of OSC Contract Review

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## Protecting Taxpayer Dollars

Since 1913, OSC has been empowered to provide an independent review of State contracts on a pre-audit basis, that is, before a contract is effective. In addition, OSC reviews State agency requests for exemption from advertising in the New York State Contract Reporter. Below are examples where State tax dollars were saved as a result of OSC's review in the 2017 calendar year:

- Costs for a SUNY Stony Brook contract for elevator maintenance appeared excessive. OSC developed a model to evaluate historical payment and invoice data and predict future payments. The result of our review, using OSC's analytics resources, was a reduction in the maximum value of the contract, producing anticipated savings of \$11.5 million over five years.
- Based on concerns raised by OSC regarding proposed costs for a contract for centralized child support collection and enforcement, OSC provided an analysis of spending on the prior contract which enabled the Office of Temporary and Disability Assistance (OTDA) to negotiate a reduction of nearly \$5 million to the contract's proposed pricing.
- OSC worked with the New York State Higher Education Services Corporation (HESC) when it was charged with the execution of a \$20 million endowment contract for the Syracuse College Promise student scholarship fund created to perpetually guarantee a path to college for every student graduating from the Syracuse City School District. The contract originally submitted to OSC needed significant modifications to protect the State's investment. OSC was able to provide critical insight on investment strategies, segregation of funds, contract management and reporting requirements, reasonableness of administrative fees, independent audit requirements, and proper controls over the scholarship award process to assist in securing the program for Syracuse students.
- OSC auditors determined the value of a \$20 million contract submitted by the State Education Department (SED) with the SUNY Research Foundation for the performance of cultural resource management services was not supported by the agency's own historical data. SED resubmitted the contract with a value of \$9.5 million, approximately \$10.5 million less than the original submission.
- OSC reviewed an Office for People With Developmental Disabilities (OPWDD) procurement for transportation services for the developmentally disabled served by the Long Island regional office. Technical assistance provided by OSC resulted in a contractual cap being placed on certain expenses, resulting in a savings of over \$5.5 million.
- OSC's review of a DOH lease extension with the United States Postal Service found that the transaction incorrectly included costs for electrical services that were to be paid directly to the service provider. The contract was corrected, avoiding a potential \$300,000 in duplicate payments.

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- OSC review of an OTDA contract amendment uncovered excess transition costs which were included in a previous transaction. Removing the duplicate line item resulted in a potential savings of nearly \$200,000.
  - OSC found that SUNY Upstate Medical Center Hospital had overstated the value of two lease amendments by \$2.1 million when it failed to consider the amount already included in previously executed amendments.
  - During the review of a DOT contract extension, OSC noted that DOT allowed the vendor to increase its overhead rate despite the original contract's requiring that the overhead rate remain fixed for the entire term of the agreement. DOT recalculated the contract extension cost at the previously agreed-upon overhead rate, resulting in a savings of over \$158,000.
  - SUNY Stony Brook submitted a contract for security guard services which included wage escalations at a rate inconsistent with historical data. The wage escalation factor was reduced commensurate with historical data, resulting in a potential savings of nearly \$60,000.

Competitive procurements initiated with broad advertising are not only fundamental elements of the State's procurement process – they are best practices and critical elements in government transparency. Under New York State's Economic Development Law, agencies may seek an exemption from advertising requirements only under certain limited circumstances, subject to OSC approval. In 2017, OSC reviewed 977 requests for exemptions from bidding and or advertising. While some exemptions may help agencies continue critical work on a temporary basis, or expand a contract already in place, 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 Thruway Authority wanted to add implementation of electronic tolling services at the replacement to the Tappan Zee Bridge to its E-ZPass contract. OSC determined that an amount of \$1 million for unspecified costs was unreasonable and that item was removed from the contract budget, resulting in a \$1 million savings.
- OSC review of a DOH request for a three-year, noncompetitive contract to provide secure prescription forms resulted in savings of approximately 28 cents per pad or an estimated \$289,000 over the life of the contract.
- The Department of Financial Services (DFS) proposed extending an existing contract for administrative services for the NYS Medical Indemnity Fund without advertising or bidding. OSC found that the proposed rate for the extension period was not adjusted to reflect the reduced scope of services. As a result of OSC's findings, DFS was able to negotiate a rate reduction estimated to save \$932,000.

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- OSC questioned the basis for a cost increase requested by DOH during extension of a contract for radiology management services. As a result of OSC's review, DOH renegotiated the cost with the vendor, resulting in savings of approximately \$1.4 million.
  - The Gaming Commission (Gaming) submitted a request to extend its existing video lottery system provider contract and its gaming contracts for an excessive term of ten years and \$2.96 billion without competitive bidding. Although the video gaming industry is undergoing significant change due to casino gambling in New York State, OSC did not believe that such changes were sufficient grounds to justify waiving competitive bidding for ten years. Recognizing the complexity of procurements for these services, OSC approved a more limited two-year extension to these contracts so Gaming can assess industry changes and complete a competitive procurement open to all qualified companies, reducing the requested noncompetitive addition to the contracts by over \$2 billion dollars.
  - Gaming submitted a request to procure lottery ball drawing machines noncompetitively, claiming there were a limited number of vendors. The claim was not substantiated, and OSC advised Gaming that this was insufficient justification to approve a noncompetitive procurement. The request was denied.
  - The Office of Mental Health requested exemption from advertising and bidding to contract with the Research Foundation for Mental Hygiene (RFMH) for "Supporting Science to Practice through Evaluation and Training" program initiatives. We identified approximately \$1.5 million in savings from salary advances that were not supported by the existing RFMH salary schedule.
  - After receiving previous exemptions to extend multiple contracts for surveillance and complaint-intake-related services, DOH requested another six-month extension of these agreements. Because unreasonable delays in competitive procurements are not fair to the bidding community and DOH had adequate time to conduct a procurement, OSC approved only an additional three months to complete new procurements for these services.
  - Prior to exercising a five-year extension to its Electronic Value Transfer contract, the OGS contacted OSC to request the addition of Automated Clearing House (ACH) processing to the contract without bidding. Although the anticipated ACH volume represented a material change to the scope of the contract, OSC recognized the immediate need for this service. OSC approved the added service but required OGS to reduce the renewal term to two years in order to introduce competition for the newly bundled services as soon as practicable.

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- SED requested an exemption from advertising and bidding for a five-year contract for professional examinations for ophthalmic dispensing and contact lens fitting. Because SED could not substantiate its claim that no other vendor could provide the service and this contract had not been advertised in over 10 years, OSC approved a two-year term to allow SED the necessary time to develop a request for proposals and to bid for the services.
  - In review of a DOH request to be exempted from advertising or bidding for outside legal services related to the regulation of adult homes, OSC found that the law firm offered a greater discount to another State agency. Based on information provided by OSC, DOH was able to renegotiate the discount offered from 10 percent to 15 percent.

## 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. Examples where OSC has leveled the playing field include:

- OSC identified a proposed subcontractor for an OGS construction contract who had been debarred by the Workers' Compensation Board and was not eligible for new public works contracts. After alerting OGS, it disallowed the debarred subcontractor from work on the contract.
- During contract review, OSC ensures that all vendors have the required Workers' Compensation and Disability Benefits insurance coverage. This provides important protections for workers, keeps all bidders on an even playing field and protects the State from potentially significant liability costs. OSC also requires satisfaction of any unpaid Workers' Compensation or Disability Benefits penalties and insurance premiums prior to contract approval. Vendors have an unfair cost advantage if they fail to keep coverage current.
- OSC rejected a \$2.5 million DOH grant contract where the not-for-profit contractor proposed to subcontract much of the work to a for-profit entity owned by the executive director of the grantee. The RFP had specified that a not-for-profit organization be awarded this grant.
- OSC also identifies and addresses outstanding State, federal, or municipal tax warrants or liens. In many cases, OSC's identification of these issues is the first step in getting a proposed contractor to begin the repayment process. Vendors who avoid taxes or liens have an unfair cost advantage and may not be considered responsible in receiving State moneys.



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## 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. Below are examples of OSC's responsiveness to State agencies' requests which ensured prompt approval of time-sensitive transactions:

- Responding to the urgent health and safety needs in Puerto Rico following hurricanes Irma and Maria, OSC provided expedited review of multiple emergency requests from the Division of Military and Naval Affairs in its efforts to assist the recovery efforts.
- OSC made its experts available for technical contract assistance and expedited the review of many contracts related to several local municipal drinking water issues, including laboratory testing, construction of a filtration plant, installation of water treatment systems and the provision of an alternative water source for residents.
- In early December 2017, DOH notified OSC of the need to expedite review of extensions to 10 federally funded health insurance contracts for certain eligible New Yorkers valued at more than \$515 million by December 31, 2017. OSC agreed to review as much information as possible prior to receiving the executed contracts on December 22, 2017. OSC completed review and approved the extensions in five days. This fast action ensured both DOH and the Centers for Medicare and Medicaid Services could enforce these critical contracts as of January 1, 2018.
- OSC committed to expedite change orders for the high-priority OGS Empire State Plaza bus loop renovation project. For example, OSC received and approved, in less than one business day, a \$201,000 change to provide additional steel welding and concrete work, which was needed after discovery of deterioration that was not apparent at the time of the bid.
- OSC expedited the review and approval of an OPWDD emergency award to a family support services provider. The previous contract holder ceased operations without warning, leaving approximately 180 families without critical care.
- OSC reviewed and approved four OGS emergency contracts related to the failure of a pedestrian bridge in Albany that is used by hundreds of State employees every day to reach OGS parking lots. Three contracts were approved in one day and the fourth in less than two days.

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- OSC expedited review of the entertainment booking services contract and other Fair-related contracts prior to the start of the 2017 New York State Fair. The entertainment booking contract was approved within one week because time was of the essence to ensure the Fair could attract the most desirable acts.
  - OSC worked cooperatively with the Division of Criminal Justice Services (DCJS) to review and approve numerous grant contracts which were submitted in late December 2017 with start dates of January 1, 2018. This enabled DCJS to provide needed services, as well as to meet the statutory time frames related to prompt contracting and avoid incurring potential prompt contracting interest.

## 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 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 or for addressing bids that are tied 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.
- Ensuring agencies have reviewed proof of required insurances, certifications, bonds or other credentials to avoid delaying critical services or interruptions in the work and to ensure that bidders are kept on an even playing field.
- Requiring agencies to demonstrate availability of State funds to assure vendors of timely payments.

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## 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:

- Frequently shares information about vendor responsibility among agencies so all stakeholders can benefit from prior knowledge of contractors.
- Frequently 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.
- Pre-reviews complex bid solicitations and bid evaluation tools to help ensure that agencies will get the best value, while avoiding unexpected delays or the need to require another round 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 available 24 hours a day, seven days a week. This single filing through the VendRep System eliminates the need for multiple lengthy paper filings for each bid and contract.
- Offers the most 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 <http://www.openbooknewyork.com/>.

## Other States and Audit Organizations

Reports by government audit agencies, including OSC's, show that the procurement process is one of the government functions that is most susceptible to manipulation, poor performance and fraud, and that an independent pre-award review saves public funds while also creating a strong deterrent to fraud, waste and abuse. While the deterrent effect of independent pre-contract reviews cannot be calculated precisely, deterrence is one of the most important consequences of such reviews. The following examples demonstrate the value of pre-contract reviews:

- A 2010 report by the federal General Services Administration (GSA) notes: "The pre-decisional, advisory nature of pre-award audits distinguishes them from other audit products. This program provides vital current information

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enabling contracting officers to significantly improve the government's negotiating position to realize millions of dollars in savings on negotiated contracts . . . . Historically, for every dollar invested in our preaward audits, we achieve at least \$10 in savings from lower prices or more favorable contract terms and conditions for the benefit of the taxpayer. The pre-decisional, advisory nature of preaward audits distinguishes them from other audit products. Preaward audits provide vital, current information enabling contracting officers to significantly improve the government's negotiating position to realize millions of dollars in savings on negotiated contracts.”

See <https://www.gsaig.gov/sites/default/files/semiannual-reports/GSA-OIG-SAR-11-2017.pdf>

- Other studies suggest even more promising results. Beginning in the early 2000s the GSA began allocating \$5 million annually to the GSA Inspector General to perform pre-award audits. According to the federal Government Accountability Office (GAO), such audits led to the identification of nearly \$4 billion in potential savings from 2004 to 2008. Based on the \$25 million investment during that five-year period, the GSA's Inspector General generated approximately \$160 in savings for every dollar spent on pre-award contract audits. See <https://www.gao.gov/assets/310/303900.pdf>, page 33.
- A report by the Organisation for Economic Cooperation and Development found 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. See [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=987026](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=987026), pages 9-10.
- Regarding 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 models. . . . 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 an economist and professor of urban planning at Columbia University also finds that contracts are poorly regulated at the end: “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.” See <http://www.thefiscaltimes.com/Articles/2014/08/05/Your-Tax-Money-Wasted-When-No-One-Watches-State-Contracts>.

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New York State is not alone in requiring an 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.
- In California, approval of the Office of Legal Services in the Department of General Services is required on all service contracts exceeding a certain threshold. The approval requirement applies to all non-IT service contracts, including consulting services and interagency agreements.
- Florida requires that contracts for services with a value of \$1 million or more and state term contracts valued at \$500,000 or more be submitted to the Bureau of Auditing for review. The review includes scope of work, deliverables, financial consequences, and payment terms among other factors.
- Texas created a multi-agency Contract Advisory Team (CAT) to assist State agencies in improving contract management practices. Agencies must submit solicitation and contract documents valued at \$10 million or more for CAT review and must comply with CAT recommendations except in limited circumstances.
- Michigan requires pre-approval by the State Administrative Board of most new contracts valued at \$250,000 or more.
- Nevada requires review and approval by the Board of Examiners (BOE) for contracts exceeding \$50,000. Contracts of any amount with current or former employees require BOE approval. The BOE consists of the Governor, the Secretary of State and the Attorney General, each an independently elected official.
- In Vermont, an agency may be required to obtain prior approval of a contract from the Secretary of Administration, the Office of the Attorney General, the Chief Information Officer, the Chief Marketing Officer, or the Commissioner of Human Resources, depending on various factors including the value and nature of the contract. The State will not execute a contract requiring prior approvals until all such required approvals have been obtained.
- The New Jersey Comptroller's Office pre-screens the legality of 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. In fiscal year 2017, New Jersey found a 49 percent error rate in contracts reviewed post-award and took corrective action on 75 of 150 pre-screened contracts. New Jersey also requires review of all State procurements that involved the expenditure of federal reconstruction resources connected to the Superstorm Sandy recovery.

# Conclusion

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Procurement is an area of government work that is highly susceptible to fraud, waste and abuse by its very nature. The independent review of contracts by the Office of the State Comptroller provides a strong deterrent to fraud, waste and abuse. The types of fraud and abuse in procurement and contracting are varied, and continue to grow as technology changes. Some examples:

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

The State Comptroller is able to perform 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. This 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.

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 impacts on businesses and not-for-profit contractors when contracts are not processed timely. Our investment in data analytics and other state-of-the-art technology bring advanced fraud detection to State contracting as well.

The State Comptroller's role in the procurement cycle was established more than 100 years ago. 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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