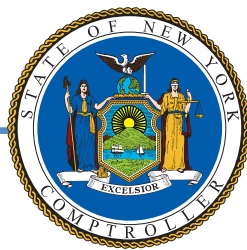

State Contracts by the Numbers

OSC Contract Review
Protects Taxpayer Dollars



OFFICE OF THE NEW YORK STATE COMPTROLLER
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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 errors and 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 the State process for purchasing goods and services, and codified procedures modeled on the longstanding procurement policies of the Office of the State Comptroller (OSC). It also reaffirmed the importance of independent oversight by OSC to:

- Safeguard public money and make sure taxpayer interests are protected;
- Prevent 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 Governor and the Legislature confirmed the value of the State Comptroller's independent oversight through the enactment of the Public Authorities Reform Act, which extended that review to certain public authority contracts. 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), have been removed from OSC oversight, and certain other contracts are often exempted through annual budget language. In calendar year 2015, State agencies awarded over \$6.8 billion in contracts where OSC pre-approval oversight had been removed.

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, its terms are favorable to the State, and a level playing field existed for bidders. It also serves as an important deterrent to waste, fraud and abuse.

The Importance of Independent Review

While the New York State Constitution empowers the State Comptroller to conduct pre- and post-audit of expenditures, in 1913 the Comptroller was given additional statutory powers to oversee contracts which today distribute billions of dollars annually in State, school and local government spending.

This oversight authority enables the Comptroller to identify and address potential problems with a procurement before a contract is finalized, and so before taxpayer money has been spent, projects have advanced, and important programs and services could be negatively impacted.

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). Generally speaking, when OSC authority to review contracts is removed, the additional AG oversight is also removed. Among other things, 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 complex contracts, such as SUNY hospital contracts which carry significant liability exposure (e.g., medical malpractice claims).

Scope of the Comptroller's Review

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. Centralized State agency contracts, as well as certain contracts of SUNY and CUNY, are currently exempt from OSC oversight.

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 often done to support agency efforts to reduce costs and ensure favorable contract terms.

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

- A recent OSC examination of SUNY Downstate Medical Center consultant spending found 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 extensive reimbursement for alcoholic beverages. See <http://www.osc.state.ny.us/audits/allaudits/bseaudits/bse20160808.pdf>.
- A payment examination of a SUNY Downstate Medical Center contract for healthcare information technology (IT) services found that the Center paid up to \$1.3 million more than necessary by using a non-competitive contract, and that the decision to use the non-competitive contract was based on unsupported claims from Center Officials. See <http://osc.state.ny.us/audits/allaudits/bseaudits/bse20160219.htm>.

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- The post-expenditure review of a small sample of payments from SUNY Downstate Medical Center to a debt collection company from a \$2.5 million contract not subject to OSC pre-review found both overpayments and ambiguous contract terms that made contract oversight difficult. See <http://osc.state.ny.us/audits/allaudits/bseaudits/bse20160603.pdf>.
 - 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 provisions limiting the amounts the consultant could charge, and allowed for an excessive profit. After an OSC expenditure examination brought this to light, DOH accepted OSC recommendations and renegotiated the contract, saving approximately \$21 million. See <http://osc.state.ny.us/audits/allaudits/bseaudits/bse20140506.htm>.
 - A random payment audit by OSC flagged a \$3 million SUNY Stony Brook contract for medical devices where the required advertisement for bids indicated that no bids would be accepted and that a vendor had already been selected. This violates SUNY's own procurement procedures for competitive bidding, which were to be followed when both the OSC pre-review authority and the statutory requirement for competition were eliminated. Stony Brook is now conducting a proper competitive procurement.

The law that removed OGS centralized contracts from OSC review has exempted a growing number of high-value consultant contracts from independent oversight. This includes IT consultant contracts with 122 firms valued at \$3.3 billion. 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 covering a wide array of goods and services increases the risk that a significant percentage of State contracts will not benefit from independent oversight. In 2015, OGS let approximately \$6 billion in centralized contracts.

Contract Review Time Frames

The average length of time for OSC contract review is between 7.5 and 11 days. By comparison, the agency procurement process (bid development, solicitation, evaluation, contract negotiation and award) that precedes OSC review can stretch out months and sometimes years. Accordingly, OSC review is not a significant time factor in the full procurement life cycle.

Results for 2015 Demonstrate Cost-Effective Oversight

OSC received 21,381 contract transactions, including both new contracts and contract amendments, valued at \$169.2 billion in the 2015 calendar year. The average time from submission to final sign-off was 9.1 days.

Average Number of Days for Transaction Review – Calendar Year 2015		
Type of Transaction	Volume	Average Days for Review
New Contracts	9,099	11.2
Contract Amendments and Change Orders	12,282	7.5
Total	21,381	9.1

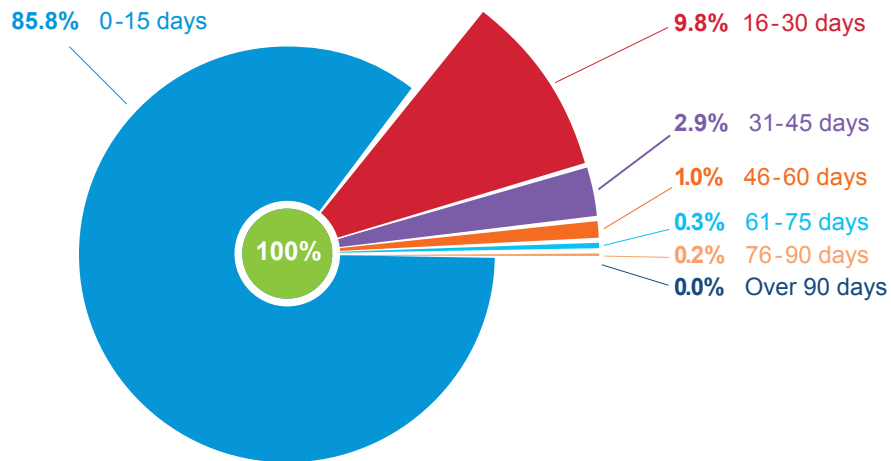
Approximately 86 percent of these transactions, representing almost 25 percent of the aggregate contract dollar value, were reviewed by OSC in 15 days or less. An additional 9.8 percent, representing an additional 70 percent of the total value of contracts, were processed in 16 to 30 days.

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 carefully reviewed to ensure all vendors received a fair opportunity to participate.

In other cases, vendor responsibility issues or bid protests become central to the outcome and may entail additional legal research before review is complete. OSC's independent review of bid protests provides an appropriate appeal process for the contracting community and can help alleviate the need for 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>.

Contract Review Time Frames

As a Percentage of Total Contracts 2015



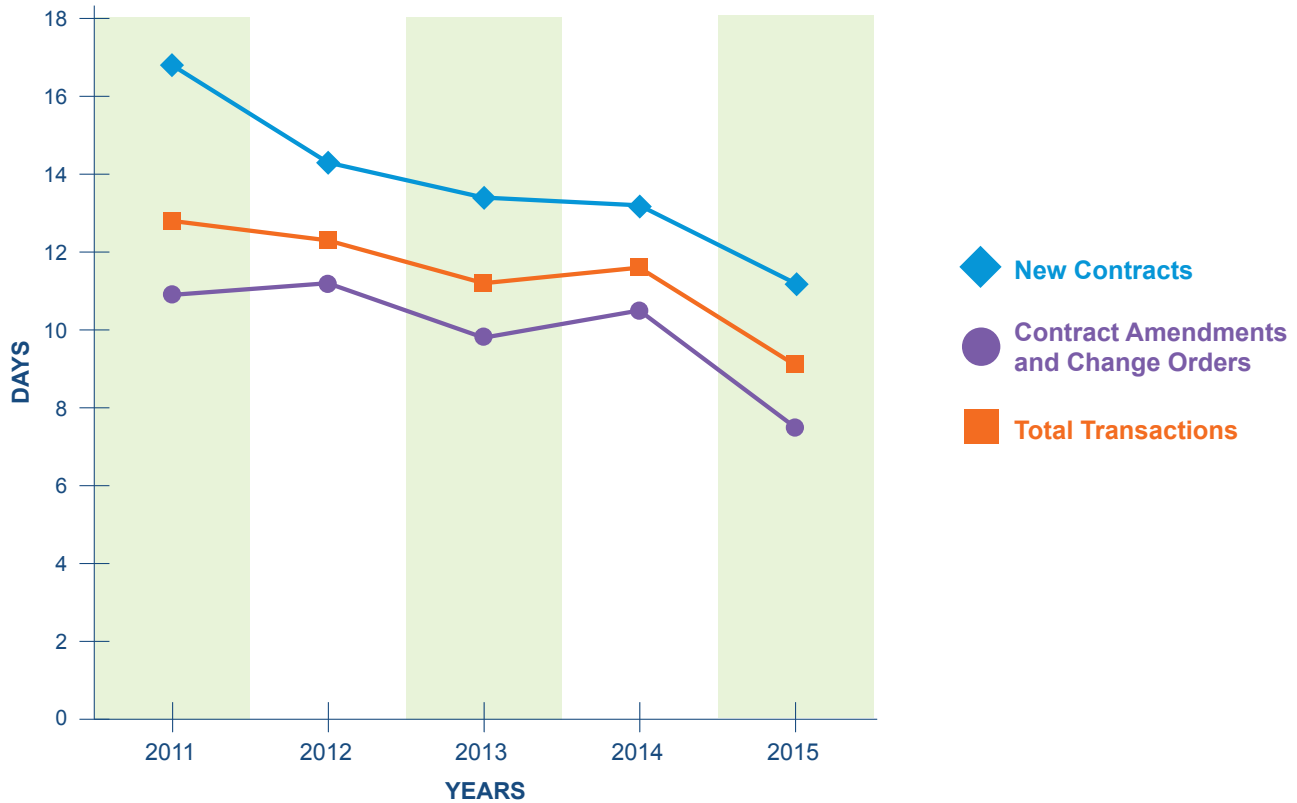
Days	Contract Transactions	Percentage of Total Contracts	Amount (\$ Billions)	Percentage of Total Value
0 – 15	18,336	85.8%	\$41.3	24.4%
16 – 30	2,100	9.8%	\$120.7	71.3%
31 – 45	629	2.9%	\$3.3	2.0%
46 – 60	212	1.0%	\$2.3	1.4%
61 – 75	66	0.3%	\$0.2	0.1%
76 – 90	36	0.2%	\$1.3	0.8%
Over 90	2	0.0%	\$0.1	0.1%
Total	21,381	100.0%	\$169.2	100.0%

Comparison with Prior Years

A comparison of results for the latest five calendar years shows overall improvements in review time frames for the period.

Contract Review Time Frames

Average Time for Contract Review 2011 – 2015



Transaction Type	2011		2012		2013		2014		2015	
	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	9,103	16.8	8,363	14.3	8,584	13.4	9,853	13.2	9,099	11.2
Contract Amendments and Change Orders	18,801	10.9	15,600	11.2	14,210	9.8	13,738	10.5	12,282	7.5
Total	27,904	12.8	23,963	12.3	22,794	11.2	23,591	11.6	21,381	9.1

Benefits of OSC Contract Review

Protecting Taxpayer Dollars

Since 1913, OSC has been empowered to provide an independent review of State contracts on a pre-audit basis. Below are some examples where State tax dollars were saved as a result of OSC's review:

- In the Annual Acquisition Plan for data center services proposed by the Office of Information Technology Services (ITS), OSC identified outdated items and a requested rate increase that was not justified. As a result, the increase was reduced, saving the State \$12 million.
- OSC found a proposed CUNY lease adjustment had overstated the lease amount by nearly \$4.8 million.
- SUNY Upstate Medical University submitted a contract for maintenance and support of its electronic medical records system. OSC identified an unjustified escalation rate and errors in the estimated annual costs. Upstate Medical amended the contract, saving approximately \$4.7 million.
- State and federal regulations require that New York determine the legal liability of third parties to pay for medical services provided to Medicaid enrollees. To comply, the Office of the Medicaid Inspector General (OMIG) bid two separate contracts to identify, verify, and recover Medicaid overpayments from liable third parties. In this case, the winning bidder for both contracts was the same vendor.

During review of the first contract, OSC questioned the reasonableness of the winning bidder's pricing and the value of the five-year contract. Based on information from a previous procurement, data from OMIG, and research on other State contracts with the same bidder, OSC found New York did not receive the bidder's most competitive rates. As a result of OSC's review, OMIG negotiated rates estimated to save nearly \$5 million for the five-year contract term. For the second contract, OSC found lower rates for similar services in other states, and subsequent OMIG negotiations with the bidder resulted in at least \$1.7 million in savings during the contract.

- The Office of Parks, Recreation and Historic Preservation (Parks) amended a dredging contract for Robert Moses State Park without justifying the cost. OSC found uncommitted funds remaining in the original contract nearly equal to the value of the increase. OSC's review ensured only the funds needed were allocated to the project, preventing unnecessary costs and saving \$950,000.
- The Department of Labor (DOL) requested exemption from advertising and competitive bidding for a contract to host and operate an Integrated Workforce Registration (IWR) System. OSC's analysis determined that the proposed solution was not yet viable and it would be less expensive to develop an internally hosted system. Consequently, DOL withdrew the request and will pursue an in-house IWR application, saving up to \$750,000.

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- In a DOH training bid for the Bureau of Supplemental Food Programs, OSC found hourly rates that were excessive. DOH renegotiated the rates, saving almost \$300,000.
 - SUNY submitted a contract for water and sewer services that included costs beyond the contract end date. The contract was reduced, saving \$203,175.
 - The New York State Insurance Fund (NYSIF) submitted a contract for continued licensing of investment accounting software. OSC identified an unjustified escalation rate and asked NYSIF to renegotiate the rate with the contractor. The contractor lowered the rate from 8 percent to 5 percent, saving approximately \$170,000.
 - OSC rejected a SUNY Stony Brook University Hospital request to assign a contract to a new vendor. OSC found that the former vendor had significant tax liens and that the new vendor was run by the daughter of the principal of the former vendor. In addition, the new and former businesses were operated from the same address. It appeared that the new company was formed for the purpose of avoiding the former company's tax liens.
 - After it was disclosed that the SUNY Upstate Medical Center President had received unapproved executive compensation, OSC now requires the SUNY Chancellor or the Chancellor's designee to sign off before approving any faculty practice contracts.
 - A five-year, non-competitive SUNY Albany cable TV service agreement contained fee increases in years four and five that could not be justified. OSC approved a three-year contract, requiring SUNY to either renegotiate the final years or competitively procure the services.
 - OSC rejected an Office of Alcohol and Substance Abuse Services (OASAS) contract with Narco Freedom after finding the vendor's Executive Director and his son, also a Narco Freedom executive, had been arrested on fraud and money laundering charges. When OASAS resubmitted the contract, OSC found that five additional people associated with Narco Freedom were also being charged, including the new Executive Director and the Board Treasurer. OSC rejected the contract again.

Ensuring a Level Playing Field

A bidder can secure an unfair competitive advantage by failing to play by the same set of rules or shortcutting State requirements observed by other bidders. Below are some examples where OSC has leveled the playing field:

- OSC rejected a Parks contract for Bear Mountain State Park after finding that the vendor and its owner had been debarred by the Workers' Compensation Board and were not eligible for new public works contracts at that time.

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- OGS requested a contract extension for a vendor whose parent company had an outstanding State tax warrant of \$80,296, which OSC discovered during its vendor responsibility review. The company forwarded nearly \$118,000 for taxes, penalties and interest to satisfy this tax warrant before the contract was approved by OSC.
 - OSC found the grantee for a Department of State contract did not disclose that the U.S. Internal Revenue Services (IRS) had revoked its 501(c)(3) status and that the vendor was not pre-qualified through the Grants Gateway, a requirement for grant contracts. OSC rejected the contract.

Identifying Best Practices

OSC helps ensure that agencies follow best practices in contracting so the State can get the best value for the taxpayer's dollar. These best practices include:

- Broad outreach to vendors to bid on contracts.
- Independent appraisals to support the purchase or sale value of real property.
- Proper vendor responsibility disclosure.
- Market analysis to determine the reasonableness of a vendor's pricing and to substantiate bids when only limited numbers of vendors compete for business.
- Due process when a bidder is disqualified or when a low bidder is bypassed for a goods or construction contract.
- Established 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 required worker protections such as prevailing wage, Workers' Compensation and disability insurance, and equal employment opportunity / nondiscrimination requirements.
- Ensuring agencies have proof of required insurance, certifications, bonds or other credentials to avoid delaying critical services or interfering with work.
- Demonstrated availability of State funds to assure vendors of timely payments.
- Ensuring revenue contracts are advertised and competitively bid.

Training and Support for Agencies

OSC is in an effective position to assist agencies because its staff members are trained in a wide variety of procurement methods and often review contracts with unique requirements or needs. For example, OSC:

- Frequently shares information about vendor responsibility among agencies so all stakeholders can benefit from prior knowledge of contractors.
- Helps agencies undertaking similar procurements to collaborate on bid documents or technical expertise, saving the State time and money.
- Provides outreach and training designed to help agencies improve the quality of procurements.
- Pre-reviews complex bid solicitations and bid evaluation tools to help ensure that an agency will get the best value and avoid unexpected delays or the need to require another round of bidding.
- Maintains the Statewide VendRep System, enabling vendors to go online to 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 VendRep replaces lengthy paper filings for every bid and contract.
- Offers extensive knowledge of statute and 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/>.

Responsive Customer Service

OSC is sensitive to agency deadlines and the business needs of the State. Below are examples of OSC's responsiveness to State agencies which ensured prompt approval of time-sensitive transactions:

- OSC worked collaboratively with the New York State Thruway Authority on its first design-build construction contract for the new bridge replacing the Tappan Zee Bridge.
- DOH asked OSC to expedite 16 lease holdover transactions. OSC approved them and recommended more efficient procedures for DOH to avoid future issues.
- OSC expedited 19 OGS contracts for paving to ensure completion during the summer construction season and to help contractors maintain project schedules. OSC provided technical assistance that will now facilitate quicker processing of future, time-critical asphalt-related projects.

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- OSC expedited 91 federal Balancing Incentive Program Fund transformation grants, enabling prompt disbursement of critical funding to assist local human services providers in improving service delivery in areas such as housing, employment, and managed care.
 - OSC worked with OGS to approve 14 Division of Military and Naval Affairs construction contracts quickly, thereby preserving more than \$26 million in federal funds left unspent by other states and reallocated to New York State with tight time constraints for their use.
 - OSC works with OGS and the New York State Fair to ensure that necessary construction and service contracts are reviewed quickly to meet tight deadlines.

Other States and Audit Organizations

Government audit agencies' reports, including OSC's, show that the procurement process is 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 pre-contract reviews cannot be precisely calculated, the following examples show the value of pre-contract reviews:

- In a report by the federal General Services Administration (GSA) on the agency's Government-Wide Contracts, Multiple Awards Schedules, and Benefits of Interagency Contracting Oversight, the GSA notes: "The pre-decisional, advisory nature of pre-award audits distinguishes them from other audit products. This program provides vital and current information enabling contracting officers to significantly improve the government's negotiating position and to realize millions of dollars in savings on negotiated contracts . . . Historically, for every dollar invested in our pre-award audits, we achieve at least \$10 in lower prices, or more favorable contract terms and conditions for the benefit of the government and the taxpayer." See https://www.gsaig.gov/sites/default/files/semiannual-reports/12739_OIG-SAR_AppFiles_050412_FINAL.pdf, page 1.
- Other studies suggest even more promising results. The GSA's Inspector General generates approximately \$160 in savings for every dollar spent on pre-award contract audits. According to the federal Government Accountability Office, pre-award audits led to the identification of nearly \$4 billion in potential savings from 2004 to 2008. See <http://www.gao.gov/assets/310/303900.pdf>, page 33.

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- A report by the international Organization for Economic Cooperation and Development (OECD) 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. See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=987026, 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 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 of 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>.

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. See <http://www.osc.ct.gov/2014memos/numbered/201411.htm>, page 3.
- Michigan requires pre-approval by the State Administrative Board of most new contracts valued at \$250,000 or more. See https://www.michigan.gov/documents/resolution_list_155716_7.pdf.
- 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 independently elected officials. See <http://budget.nv.gov/uploadedFiles/budgetnv.gov/content/Documents/State%20Administrative%20Manual.pdf>, page 20.
- Vermont requires that when its Agency of Transportation (AOT) is selecting a contractor, AOT’s Audit Section must review the contract for compliance with the bid solicitation and ensure the language specifies all the necessary contract requirements. The audit section also reviews the selected firm’s long-term viability and verifies the firm has no outstanding receivables with AOT. Areas of noncompliance are reported back to the Contract Administration group for follow-up. See <http://vtrans.vermont.gov/finance-admin/audit>.

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 in the \$2 million to \$10 million range. Among New Jersey contracts of \$10 million or more, one in three procurements broke laws designed to ensure fairness.

New Jersey's Comptroller now 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. In 2015, New Jersey took corrective action on 69 of 160 pre-screened contracts. Additionally, New Jersey added oversight responsibility with regard to contracts connected to Superstorm Sandy requiring review of any and all State procurements that involved the expenditure of federal reconstruction resources connected to the Sandy recovery. New Jersey reviewed 127 such contracts, taking corrective actions on 50. See http://nj.gov/comptroller/news/docs/2015_osc_annual_report.pdf.

In a February 15, 2013, letter to the editor of The Ledger, 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." See <http://www.theledger.com/article/20130215/EDIT02/130219606>.

Conclusion

The independent review of contracts is a strong deterrent to waste, fraud and abuse. The State Comptroller is able to perform this function for the benefit of taxpayers, vendors, not-for-profit organizations and State government within a reasonable timeframe 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-profits when contracts are not processed timely.

Other governments that do not have an independent contract review process in place have been exploring ways to institute this function, to save money and enhance procurement integrity.

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 value to citizens of New York State.

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