


State of Collaboration
Best Practices for Best Price Procurements



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THOMAS P. DiNAPOLI

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**Part 1:
Planning the IFB**




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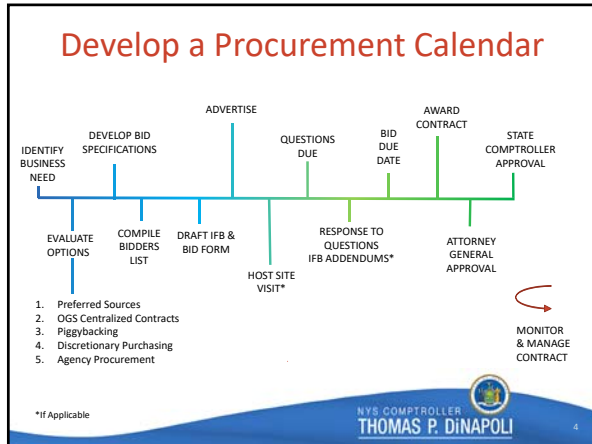
**Step 1: Develop the Procurement
Calendar**

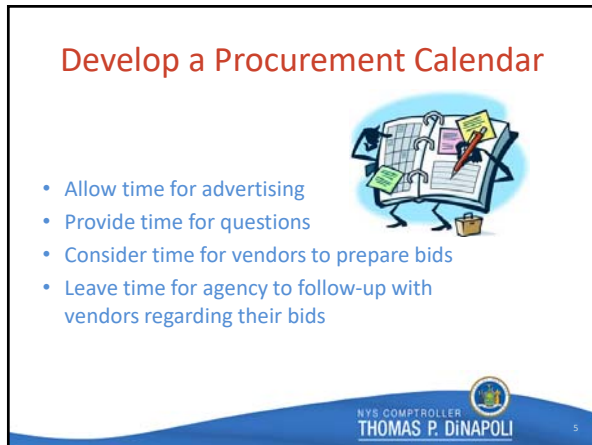
Step 1 is the Preparation
Phase

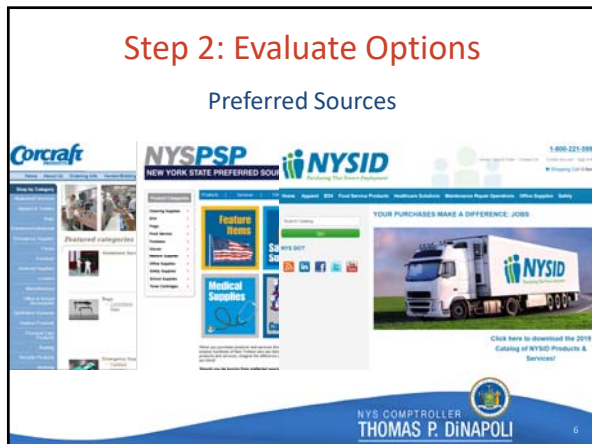


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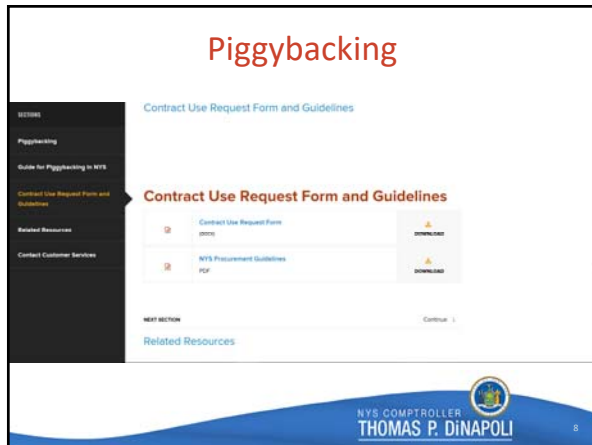
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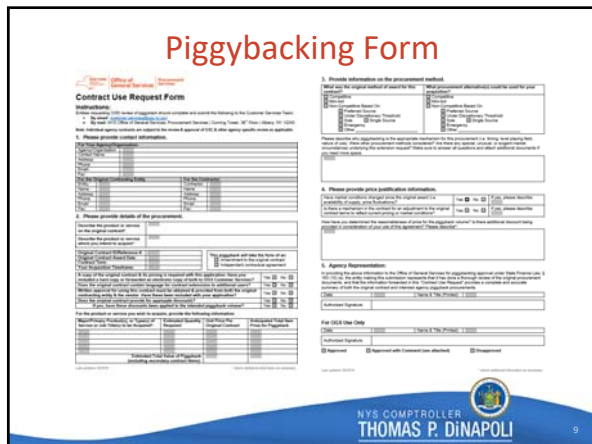












Discretionary Purchasing

DISCRETIONARY THRESHOLDS - STATE FINANCE LAW
 This chart summarizes discretionary thresholds, Contract Reporter requirements, and the Office of the State Comptroller (OSC) pre-approval requirements. Localities and other Authorized Users must follow their own governing laws and guidelines.

DISCRETIONARY THRESHOLDS				
Category	State Agencies	OSG Finance	OSG Centralized Contracts	SUNY
General Purchases	Discretion up to \$50,000	Discretion up to \$65,000	N/A	Discretion up to \$250,000. For services with exceptions, see note 2.
Printing Purchases	Discretion up to \$50,000	Discretion up to \$65,000	N/A	Discretion up to \$250,000. For services with exceptions, see note 2.
Purchases from Small, Certified Minority or Women-Owned Businesses or Service-Disabled Veteran-Owned Businesses, or for Recycled or Manufactured Commodities or Technology	Discretion up to \$200,000	Discretion up to \$200,000	N/A	Discretion up to \$200,000

OSC CONTRACT APPROVAL REQUIREMENTS				
General Purchases	Required for contracts valued over \$50,000	Required for contracts valued over \$65,000	Contracts of value \$112 are exempt from OSC pre-contract approval	Required only for nonconstruction service contracts valued over \$250,000 (see note 2)

CONTRACT REPORTER REQUIREMENTS				
Community Bidding Opportunities	Advertisement required for contracts of \$50,000 or more	Advertisement required for contracts of \$65,000 or more	All centralized opportunities advertised in NYSCR	Advertisement required for contracts of \$50,000 or more
Services Bidding Opportunities (including technology)	Advertisement required for contracts of \$50,000 or more	Advertisement required for contracts of \$65,000 or more	All centralized opportunities advertised in NYSCR	Advertisement required for contracts of \$50,000 or more
Quarterly Advertisements	Anticipated purchases between \$5,000 to \$15,000		All centralized opportunities advertised in NYSCR	Anticipated purchases between \$10,000 to \$50,000

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Discretionary Purchasing

Current Discretionary Purchasing Limit:
\$200,000*

- Service Disabled Veteran Owned Businesses
- New York State Grown, Produced or Harvested Foods
- New York State Small Businesses
- MWBEs

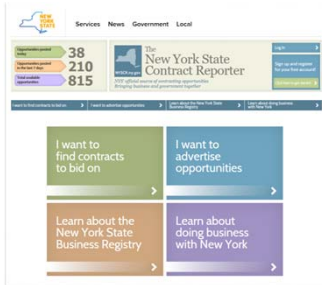
*Starting 1/20/2020, the Discretionary Purchasing Limit will be \$500,000, with the exception of New York State Grown, Produced or Harvested Foods, which remains \$200,000

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Step 3: Developing Specifications

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Step 6: Advertisement



- Confirm dates on the procurement calendar before placing an advertisement
- Confirm agency staff will be present for any internal approvals or evaluations needed

Step 7: Draft Contract & Attachments

- Drafting the contract can start at any time
- Contract Term & Maximum Contract Amount
- Scope of Work & Mandatory Requirements
- Legal Requirements & Appendix A
- MWBE & SDVOB Goals
- Order of Precedence
- Payment Terms



Step 8: Bid Opening & Responsiveness



- Ensure low bidder is Responsive and Responsible
- Ensure a written policy regarding tie bids is in place before the bid opening
- Canvas for No-Bid Responses



Step 9: Notice of Award

- Award & Non-Award Notices must be sent to all bidders prior to contract submission. Bidders have 15 calendar days from date of notice to request a debriefing per SFL §163.9
- Be familiar with your agency's debriefing & protest procedures
- See Section XI.17 of the GFO & Part 24 of Title 2 of the NYCRR for OSC protest procedures



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Step 10: Submit the Contract

- Ensure Contract Document is Complete
- Bid Tab, Cost Justification, Advertisement, Award & Non-Award Letters, IFB & Addendums, Proof of Mandatory Items & Agency Correspondence
- STS & Cover Letter
- Vendor Responsibility



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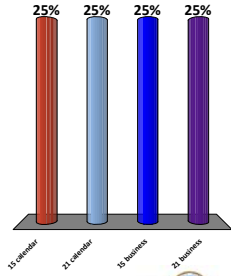
COLLABORATION BRINGS SUCCESS

- Collaborate with other agencies who have similar missions
- One thing you can count on is a changing schedule!
- Listening skills can't be overrated
- Leverage your resources
- Advertise
- Be certain of your priorities so you can be proactive
- On time and under budget is the goal!
- Reach out to OSC early on to review your IFB and contract documents
- Always include a cost justification in the procurement record
- Track the schedule and make adjustments as you go
- Invest in your team— share what you know!
- Own the project and share your success
- Now is the time to document best practices and map your future!



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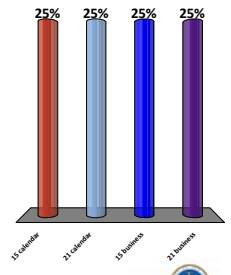
Q1. Your agency plans to advertise an IFB on March 15, 2019. What is the minimum number of days that this advertisement must be posted for?



- A. 15 calendar days
- B. 21 calendar days
- C. 15 business days
- D. 21 business days

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Q2. A contract was awarded on October 12, 2019, with notices sent out that day. How long does a vendor have to request a debriefing?



- A. 15 calendar days
- B. 21 calendar days
- C. 15 business days
- D. 21 business days

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PART 2: Method of Award



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Method of Award

- Awards based on low price can be made by Item, by Lot, by Region or by Grand Total
- Confirm how tie bids will be decided
- Indicate the potential for multiple awards and how work will be assigned



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Method of Award

When determining the Method of Award consider the following:

- Can similar products be grouped together
- Reasonable estimates – based on historical usage, when possible
- Is there a benefit or disadvantage for contracting with a single vendor
- Is delivery to a particular geographic location a consideration

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Method of Award

Bid Sheet

- Do not invite vendors to include pricing for additional items or services or expand upon requirements without factoring these additions into the Method of Award
- Items cannot be awarded if they are not evaluated
- Consider weighting the items or services based on expected usage or anticipated cost
 - For example, 90% weighting for all required items versus 10% weighting for optional items
 - Should be a reasonable estimate, based on historical usage when possible

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Method of Award

IFB Example 1

- An Agency submitted a contract for 8 services including the following 3 categories of annual hourly needs:
 - 1,000 hours: non-emergency equipment with operator
 - 1,000 hours: emergency services
 - 200 hours: emergency equipment with operator



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Method of Award

Example 1

- These 3 annual estimated service hour needs could not be defended by the agency as reasonable. The actual average annual hours for each service historically was as follows:
 - 5.3 hours - non-emergency equipment with operator
 - 18.0 hours - emergency services
 - 2.47 hours - emergency equipment with operator
- The contract was non-approved and returned to the agency for further action



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Method of Award

IFB Example 1 Solution

- We opined that the requirements of SFL Section 163 implicitly require the evaluation methodology used by a procuring agency in determining cost must have a reasonable relationship to the anticipated costs of the contract.
- We further noted that while the hours used to evaluate proposals need not mathematically track historic usage, such hours must have a reasonable relationship to historic patterns of use, except where the agency can document that there is some reasonable basis to believe that there will be major changes in future usage.



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Method of Award

IFB Example 1 – Unintended Consequences

- Unreasonable need estimates can have unintended consequences to the bidding community
 - For services: A vendor may seek to hire sufficient staff to handle the agency's estimated service. If actual need is much lower, new staff may be laid off
 - For commodities: A vendor may purchase additional inventory to meet Agency need. If the need is substantially less than solicited, vendor may face financial loss



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Method of Award

IFB Example 1 – Unintended Consequences

- As important as is for an agency to expect a vendor to perform the services or provide the commodities requested, vendors expect the agency's stated need will be rationale and reasonable



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Method of Award

IFB Example 2

- Agency reserves the right to award the bid based on any of the following criteria, whichever is in the best interest of the State:
 - Total of item A
 - Total of item B
 - Total of item A plus item B
- Key points to consider:
 - What items are needed by the agency?
 - What drives the decision on how to award the contract?
 - Would all vendors be able to determine how the contract will be awarded?



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Method of Award

Example 3 Bid Results

- The following two bids were received:

Job Title	Hourly Rate Vendor A	Hourly Rate Vendor B
Apprentice	\$50	\$50
Service Technician	\$90	\$70
Foreperson	\$20	\$80
Average	\$53.33	\$66.67

- Vendor A is the low bidder according to the Method of Award, however, they indicated that they only send service technicians when work is required. The IFB did not specify who determines the skill level required for a job.





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Method of Award

Example 3 Discussion

- Does this create a level playing field?
- How could this be altered to better reflect the Agency's needs?
- What problems do you foresee when bids are received?






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Method of Award

Example 3 Solution

Job Title	Number of Hours (per year)	Hourly Rate Vendor A	Extension Vendor A	Hourly Rate Vendor B	Extension Vendor B
Apprentice	100	\$50	\$5,000	\$50	\$5,000
Service Technician	75	\$90	\$6,750	\$70	\$5,250
Foreperson	5	\$20	\$100	\$80	\$400
Grand Total			\$11,850		\$10,650

- Indicate the number of estimated hours per job title, per year
- Base the Method of Award on the Grand Total Bid amount
- Indicate in the IFB who determines which skill set is required for each job





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Method of Award

IFB Example 4

- An IFB was conducted for lab testing services where vendors were asked to submit a per test price. In addition, the agency requested that vendors provide hourly rates for data review and expert testimony. These additional services are rarely used and no estimated number of hours were provided in the bid document. The method of award states: "Award will be made to the bidder meeting all of the mandatory bid requirements and submitting the lowest per sample price."





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Method of Award

Example 4 Discussion

- Do the vendors have enough information to submit reasonable prices for the additional services?
- Does the Method of Award clearly reflect the agency's need?
- What information may help bidders formulate their bids more appropriately?
- What information may help the agency identify the true lowest bid?




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Method of Award

Example 4 Solution


Item	Quantity	Rate Vendor A	Extension Vendor A	Rate Vendor B	Extension Vendor B
Per Sample Price	500	\$99.00	\$49,500.00	\$100.00	\$50,000.00
Hourly Data Review	10	\$100.00	\$1,000.00	\$50.00	\$500.00
Hourly Expert Testimony	10	\$200.00	\$2,000.00	\$100.00	\$1,000.00
Grand Total			\$52,500.00		\$51,500.00

- Using the method of award stated, Vendor A would have been awarded the contract; however, Vendor B's total contract value was lower
- Optional items should be estimated based on historical usage and incorporated into the Method of Award



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PART 3:
Streamlining the Approval Process



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Limited Competition

What To Do When Your Procurement Receives
Less Than Three Bids

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Limited Competition

Procurement records should address:

- The reasonableness of specifications (not restrictive or vague)
- The price being charged is reasonable
- The extenuating circumstances that contributed to the limited competition

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Limited Competition

Procurement records should address:

- How your bidders list was developed
- How bidder eligibility was determined
- If an item needs to include a specific feature
- If an item has to meet a certain measurement





Limited Competition


Is the price being charged reasonable?

- Historical Cost
- Market Rates
- Discounts from Published Price Lists
- Cost of Similar Projects
- Purchases Made by Other State Agencies (SFS & Open Book)
- Purchases Made by Other States & Governmental Entities
- GSA Pricing

Limited Competition

What extenuating circumstances could contribute to limited competition?

- Remote Location
- Specialized Work
- Secured Location or Personal Safety Concerns
- No Bid Responses




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Limited Competition


How was your Bidders List Developed?

- How were bidders identified?
 - Google Search
 - Contract Reporter Vendor List
 - MWBE Database
 - Previous Contracts
 - Open Book
 - Other Agencies
- Review bidders list to verify relevance of vendors



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Vendor Responsibility Documents



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Vendor Responsibility Documents

What documents are needed?

- Vendor Responsibility Profile
- Workers' Compensation
 - Required if the vendor has any employees and performs services within New York State
- Disability Benefits
 - Required if the vendor has any employees and performs services in New York State in excess of 30 Days
- Exemptions



Vendor Responsibility Documents

What documents are needed?

Vendor Responsibility Questionnaire

- Required for any contract over \$100,000
- Can be completed online or using paper questionnaire
- Valid for 6 months



The image shows two forms from the NYS Comptroller's office. The top form is the 'Vendor Responsibility Profile' (NY 275 Rev 1/13) and the bottom form is the 'Certificate of Insurance Coverage' (NY 276 Rev 1/13). Red circles highlight several fields in both forms, including 'Vendor Name', 'Tax ID', 'EIN', 'Business License Number', 'Workers' Compensation Board', 'Disability Benefits Board', and 'Certificate Number'.

Vendor Responsibility Documents

Subcontractors

- If known at the time of award, a Vendor Responsibility Profile and Questionnaire is required for any subcontractor receiving over \$100,000
- For more information on vendor responsibility requirements, please attend the presentation being given by our Vendor Responsibility Team



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Other Common Questions



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Price Adjustment Clauses

Rate adjustments need to be clearly articulated, relevant to the item or service, and must define the frequency of application


- Consumer Price Index
- Producer Price Index
- Prevailing Wages
- Fuel Indices
- Fixed Percentage Increase



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Exceptions & Bid Deviations



- Any exceptions or deviations to the bid specifications must be documented and included in the procurement record
- Include a memo to OSC indicating the following:
 - How the exception or deviation was determined to be immaterial
 - How other bidders and potential bidders were not harmed by accepting the exception or deviation



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Rejected Bids


- Explain the reason for the rejection in the procurement record
- Allow due-process to the rejected bidders
- Include the rejected bids in the procurement record along with bidder correspondence



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Non-Award Letters

- Non-award letters must be sent to all unsuccessful bidders
 - Required by SFL §163
 - Start the debriefing period
 - Need to be documented



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Debriefings

- State Finance Law §163(9)(c)(i)
- Within 15 calendar days of notice of non-award
- Include debriefing procedures in the solicitation
- Discussions should be limited to the debriefing vendor's bid only
- Include documentation in the procurement record



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Bid Protests

- GFO, Chapter XI.17
- It is recommend that:
 - Agencies establish their own protest procedures
 - Notice of agency protest procedures is included in the solicitation, including appeal to OSC
- If a protest is received, agencies must:
 - Respond appropriately to the protest and uphold or deny
 - Include all documentation in the procurement record



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Other Considerations

- Ensure all bidders receive written responses to any questions
- Ensure all bidders receive any addendums issued
- If no questions are asked during the Question & Answer period, please include documentation in procurement record



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Useful Websites


1122 Program	www.ogs.ny.gov/procurement/1122-program
Assembly	www.nyassembly.gov
Business Services Center	www.bsc.ogs.ny.gov
Contract Reporter	www.nycr.ny.gov
Corcraft Catalog	www.corcraft.org/webapp/wcs/stores/servlet/TopCategoriesDisplay?catalogId=18&storeId=10001&catalogId=10001
Date Calculator	www.timeanddate.com/date/dateadd.html
Doing Business in New York	www.dos.ny.gov/csm/ds_bus.html
Empire State Development	www.esdf.ny.gov
Florida	www.dns.myflorida.com
General Services Administrations	www.gsa.gov/bortal
Guide to Financial Operations	www.osc.state.ny.us/agencies/guide/MyWebHelp/
Information Technology Services	www.its.ny.gov
Legislative Information	www.publiclegalinfo.com
MWBE Directory	www.ny.newycontracts.com/
National Industries for the Blind	www.nib.org
New Jersey	www.state.nj.us



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Useful Websites

New York Codes, Rules and Regulations	https://gov.westlaw.com/nycr/Document/Ia1504902613e74e069189f316eff7v1aw?contextData=sc.Default&hqs=1
New York State Finance Law	www.codes.findlaw.com/ny/state-finance-law/
New York State Industries for the Disabled Catalog	www.shop.nysid.org/
Office of General Services Procurement Group	www.ogs.ny.gov/procurement
Office of the State Comptroller	www.osc.ny.gov
Open Book	www.openbooknewyork.com
Open Data New York	www.data.ny.gov
Preferred Source Directory on OGS Website	www.ogs.ny.gov/procurement/preferred-sources
Prevailing Wage Schedules	https://www.labor.ny.gov/workerprotection/publicwork/PWCcontents.shtm
Service Disabled Veterans Owned Business Directory	www.online.ogs.ny.gov/SOVDB/search
Service Disabled Veterans Business Development	www.ogs.ny.gov/veterans
State Register	www.dos.ny.gov/info/register.htm
United States Bureau of Labor (CPI Index)	https://www.bls.gov/cpi/home.htm
Vendor Responsibility	www.osc.state.ny.us/vendrep
Workers' Compensation Board	www.wcb.ny.gov



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