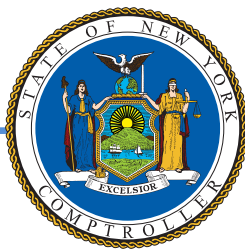


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# State Contracts by the Numbers

2018 Calendar Year

OSC Contract Review  
Protects Taxpayer Dollars



**OFFICE OF THE NEW YORK STATE COMPTROLLER**

Thomas P. DiNapoli, State Comptroller

MAY 2019



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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. Results from 2018 when all contracts were reviewed on average in 6.3 days clearly demonstrate that review is efficient with little impact on the overall timeframe of procurements which can last months and even years. And more than nine out of 10 contracts valued at more than \$50 billion are reviewed on average within two weeks.

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 ensure the protection of taxpayer interests;
- 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 2018, State agencies awarded over \$2.9 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 and other vendors by ensuring contract costs are reasonable, terms are favorable to the State, and bidders were treated fairly. Independent review is also 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 that was introduced that year by the Legislature (S.3984-A/A.6355-A) to enhance the integrity, transparency and accountability of the State's procurement process. This legislation was not enacted.

The 2019-20 Executive Budget included provisions that would have restored OSC's independent review of the SUNY, CUNY and OGS contracts that had been exempted from oversight, as well as authorizing the Comptroller to review certain SUNY Research Foundation contracts. The Enacted Budget did not include these provisions. While conceptual agreement was reached between the Executive and the Office of the State Comptroller with respect to certain aspects of procurement oversight, including OSC's independent contract review, the specifics for implementation remain to be finalized.

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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 authority to review contracts serves as 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.

# Contract 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, were exempted 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.

This independent review 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.

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

- SUNY Stony Brook entered into a \$2.6 million construction management contract with a construction company that admitted the previous year it had engaged in an eight-year-long fraudulent overbilling scheme involving virtually all of its projects, including ones with the Dormitory Authority of the State of New York (DASNY). As a result, the construction firm paid \$7 million in penalties and entered into a non-prosecution agreement. <https://www.justice.gov/usao-edny/pr/hunter-roberts-construction-pay-more-7-million-penalties-and-restitution-engaging>
- The CUNY Research Foundation, a CUNY-affiliated not-for-profit organization, bypassed procurement rules and awarded a sole-source contract worth \$1.25 million to a favored firm as part of its advertising and marketing rebranding campaign. <https://nypost.com/2018/07/04/ad-firm-sues-cuny-for-stiffing-them-on-rebranding-campaign/>

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- DASNY awarded a \$350,000 contract to a western New York contractor for building improvements at the Buffalo Psychiatric Center in Buffalo, New York. The contractor was required to have a minimum of 13 percent minority business participation in the project and contracted with a minority contractor to meet this goal. The prime contractor, however, hired other subcontractors to complete the work intended for the minority subcontractor. The minority subcontractor, who performed no work, was paid a fee to give the false appearance of minority business participation. <https://www.newyorkconstructionreport.com/western-new-york-contractor-pleads-guilty-to-mbe-business-documentation-fraud/>

The 2012 law that removed OGS centralized contracts from OSC pre-review has exempted a growing number of high-value consultant contracts from independent oversight. In calendar year 2018, OGS let approximately \$2.09 billion in contracts not subject to OSC oversight. Over the past seven years, more than 100 information technology consultant contracts worth billions of dollars have been approved without the benefit of OSC oversight. By law, State agencies must use these contracts if they meet the “form, fit and function” requirements, but they are also widely used by local governments and school districts. Without assurance that fair, competitive rates are established in centralized contracts, State and local taxpayers risk paying more than necessary.

The State Comptroller performs 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.



# Contract Review Time Frames

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OSC is transforming its contract review process by incorporating new data analytic technology and data-driven decision-making procedures. In 2018, the average length of time for OSC contract review was 6.3 days. Review time has decreased nearly 50 percent over the past five years. By comparison, the agency procurement process (including bid development, solicitation, evaluation, contract negotiation and award) that precedes OSC review can stretch out for months or longer.

OSC understands the importance of prompt action in contracting, especially for not-for-profits that care for our most vulnerable citizens and for construction projects which must be completed within a short window of time when weather is favorable. OSC also continually prioritizes contract reviews to accommodate urgent and emergency contracting situations.

## Results for 2018 Demonstrate Cost-Effective Oversight

### Average Number of Days to Review Contracts

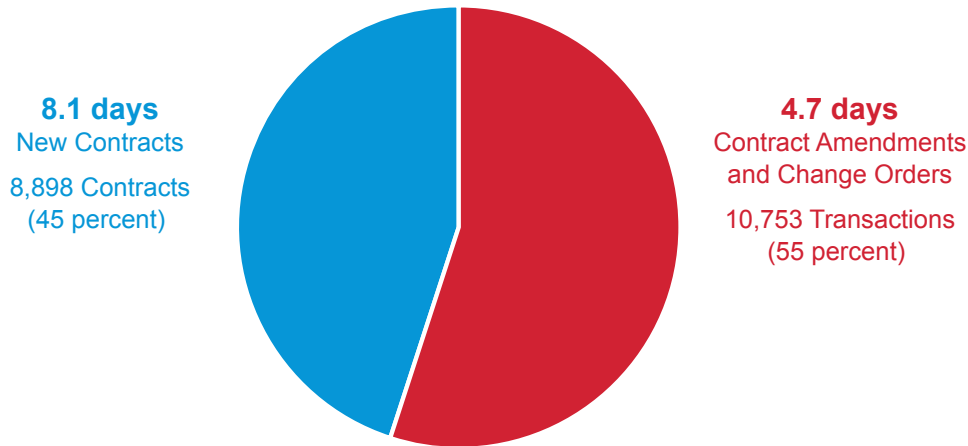
OSC received 19,651 contract transactions, including both new contracts and contract amendments, valued at \$70.87 billion in the 2018 calendar year. The average time from agency contract submission to final sign-off was 6.3 days.

Average Number of Days for Transaction Review – Calendar Year 2018			
Type of Transactions	Number	Average Days for Review	Total Value
New Contracts	8,898	8.1	\$37.99 billion
Contract Amendments and Change Orders	10,753	4.7	\$32.88 billion
<b>Total</b>	<b>19,651</b>	<b>6.3</b>	<b>\$70.87 billion</b>

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## Average Days for Contract Review

### 6.3 – Overall Days to Review all Contracts, Amendments and Change Orders



### Overall Number of Days to Review Contracts

While State law provides OSC up to 90 days to review contracts, more than nine out of 10 contracts (90.7 percent) were reviewed in 15 days or less in 2018. An additional 7 percent were completed in 30 days or less—leaving only about 2 percent of the total at longer than 30 days but still well within statutory limits. The pie chart of *Contract Review Time Frames*, on the next page, helps illustrate how OSC has achieved an average review time of 6.3 days in 2018 with the vast majority of all contracts approved quickly.

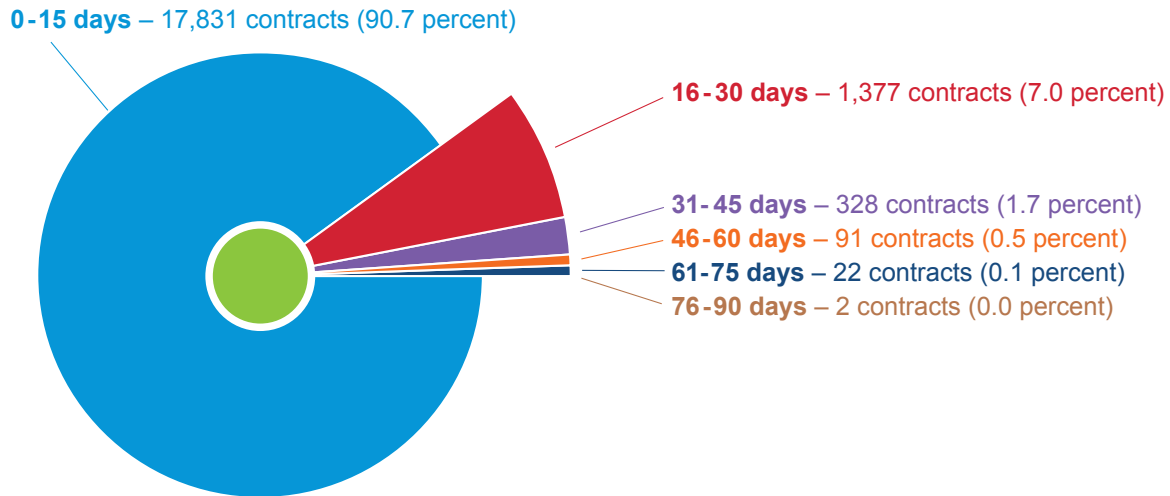
In limited cases, contract review may exceed anticipated time frames due to a variety of factors, ranging from avoidable agency errors and omissions in the submission (such as lack of required signatures or documents) to procurements with multistage evaluations and complex scoring that must be reviewed extensively 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. In some cases, vendor responsibility issues or bid protests may become central to the outcome, and may entail additional review before a contract can be approved. In 2018 OSC denied six protests and upheld one.

OSC's independent review of bid protests provides a valuable appeal process for the contracting community and can help avoid the risk of lawsuits, which are costly for vendors and the agency. For example, OSC upheld a vendor protest in 2018 and rejected a SUNY Stony Brook heating and air conditioning contract because Stony Brook improperly changed the procurement requirements after the bid opening. ([https://www.osc.state.ny.us/contracts/bidprotestdecisions/bpd\\_SF20180105.pdf](https://www.osc.state.ny.us/contracts/bidprotestdecisions/bpd_SF20180105.pdf)) 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

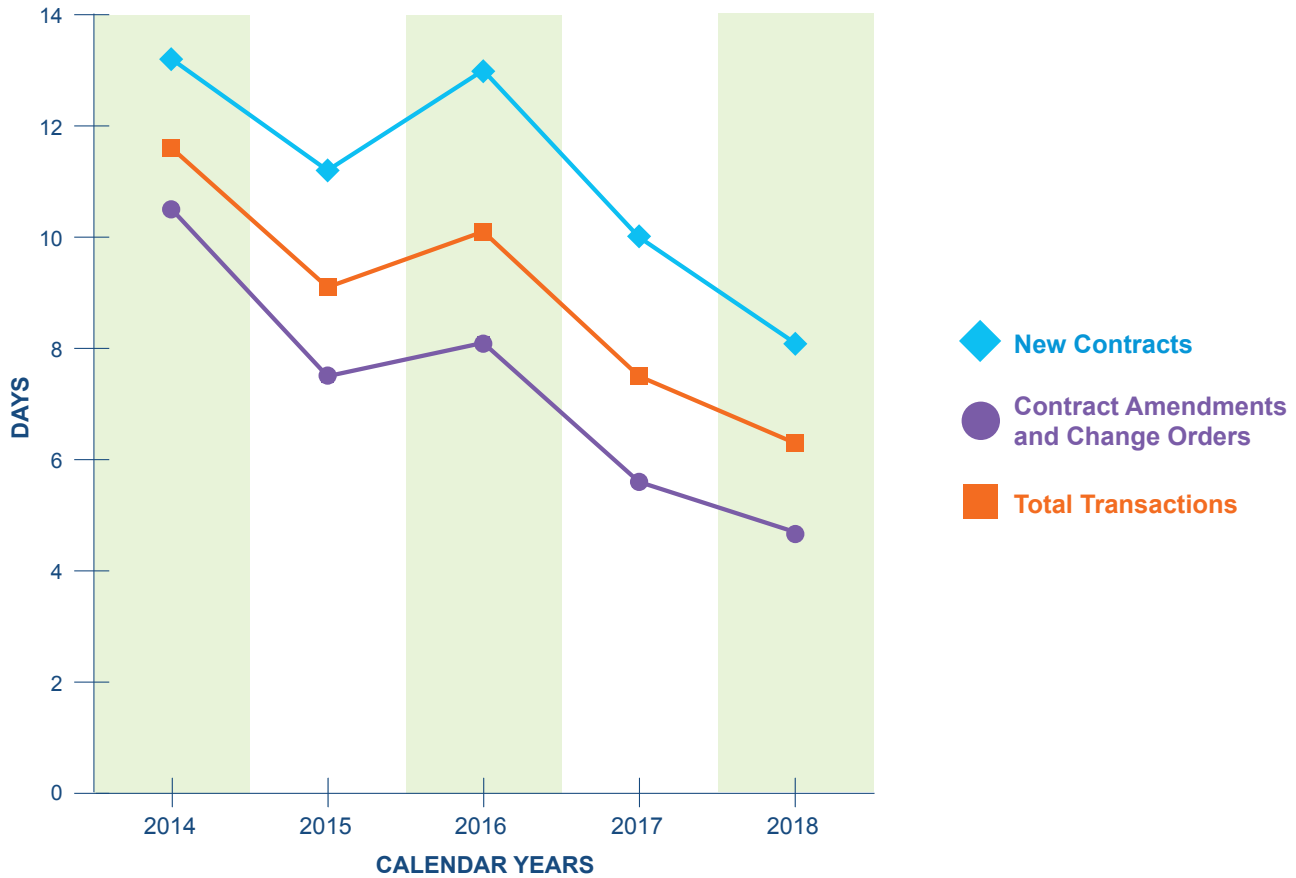
Time to Complete Review for All Contracts in 2018



Days	Contract Transactions	Percentage of Total Contracts	Amount (\$ Billions)	Percentage of Total Value
0 – 15	17,831	90.7%	\$51.3	72.3%
16 – 30	1,377	7.0%	\$10.8	15.3%
31 – 45	328	1.7%	\$7.6	10.7%
46 – 60	91	0.5%	\$0.9	1.3%
61 – 75	22	0.1%	\$0.2	0.3%
76 – 90	2	0.0%	\$0.1	0.1%
<b>Total</b>	<b>19,651</b>	<b>100.0%</b>	<b>\$70.9</b>	<b>100.0%</b>

## Contract Review Time Frames Historical Trends

Average Time for Contract Review 2014– 2018



Transaction Type	2014		2015		2016		2017		2018	
	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	9,853	13.2	9,099	11.2	8,831	13.0	9,027	10.0	8,898	8.1
Contract Amendments and Change Orders	13,738	10.5	12,282	7.5	12,817	8.1	11,840	5.6	10,753	4.7
<b>Total</b>	<b>23,591</b>	<b>11.6</b>	<b>21,381</b>	<b>9.1</b>	<b>21,648</b>	<b>10.1</b>	<b>20,867</b>	<b>7.5</b>	<b>19,651</b>	<b>6.3</b>

# Benefits of OSC Contract Review

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## Protecting Taxpayer Dollars

Since 1913, OSC has been empowered to conduct an independent review of State contracts on a pre-audit basis, that is, before a contract becomes effective and tax dollars are spent. In addition, OSC reviews State agency requests for exemption from advertising in the New State Contract Reporter, which is the first step for an agency to employ a specific vendor without competitive bidding.

OSC's contract review often finds opportunities to renegotiate costs, resulting in savings for agencies and taxpayers:

- The Office of Information Technology Services (ITS) amended a contract for the operation of the infrastructure that supports many of the State's critical information technology business functions. OSC questioned the overall costs associated with the amendment, which appeared to include significant annual increases. ITS subsequently renegotiated costs with the vendor, with savings of approximately \$9 million compared to the original request.
- The Office for People with Developmental Disabilities (OPWDD) submitted a \$9.2 million contract for transportation services as a part of a multiple award to several vendors. OSC's review of the bids showed this vendor was consistently higher priced—as much as three times higher—than other vendors offering the same services in other locations. OSC directed OPWDD to renegotiate with the vendor, for a savings of \$2.9 million.
- The Department of Transportation (DOT) awarded a contract for the construction of a new Adirondack Welcome Center Building, but OSC found that DOT received only one bid, which was nearly 40 percent higher than the DOT pre-bid estimate. OSC pressed DOT to negotiate with the proposed contractor, which resulted in savings of \$1 million.
- The Office of Temporary and Disability Assistance (OTDA) submitted a two-year extension to existing contracts for consultative medical examinations. However, OSC found the proposed rates for certain services exceeded the fee schedule, which is capped at rates set under the Medicaid program. OTDA subsequently renegotiated rates with the vendor, saving approximately \$659,000.

OSC also identifies other errors, including overstated costs and duplication of other contracts. For example:

- OSC's review of leases commonly finds duplication between new lease terms and the terms of previous lease agreements. The most common error was duplication of the months accounted for in prior and new leases. In 2018, these findings generated savings to the State of \$3.5 million.

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- In reviewing a lease submitted by the Office of Children and Family Services (OCFS), OSC found that the amount was overstated by \$2.2 million because it included utility costs that should not be paid to the vendor.
  - OSC reviewed a new Office of Parks, Recreation and Historic Preservation (Parks) agreement and discovered an identical existing agreement with remaining unexpended funds. OSC advised Parks to close out the existing contract to avoid the potential for duplicate payments, resulting in cost avoidance of \$1.4 million.
  - The value of a SUNY Upstate Medical Center contract appeared inflated and not supported by the documentation provided by SUNY. SUNY agreed with OSC that the amount was incorrect and the transaction was resubmitted, saving nearly \$625,000.
  - The State Education Department (SED) submitted a contract amendment to increase the total cost and incorporate a new budget and work plan. OSC found that sufficient funds remained in the original contract to support the services. SED agreed and resubmitted the transaction at no additional cost, for a savings of \$865,000.
  - OSC found that SUNY Upstate Medical Center included an administrative fee within a contract that was not allowed by SUNY's own policies. At OSC's request the fee was removed, resulting in a savings of \$60,000.

Pursuant to New York State Economic Development Law, OSC also reviews agency requests to contract with vendors without advertising the procurement opportunity, resulting in contracts that are awarded to a pre-identified vendor without competitive bidding. Under these circumstances, it is often difficult to determine whether the price is reasonable and the contract in the best interest of the State.

OSC reviewed 1,032 requests for exemption from bidding and advertising in 2018, and rejected 242. While some exemptions are necessary, 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:

- CUNY requested a three-year extension to its existing admissions system contract for maintenance and support. OSC auditors found that CUNY's new admission system was scheduled to be operational within a year, and CUNY's existing contract had sufficient funds to pay for the remaining services. CUNY resubmitted the request for a one year period without additional funds, resulting in savings of \$807,000.

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- The Office of the Attorney General (AG) requested to extend a contract, which included facility rental costs. OSC questioned a significant increase in the budget line for that purpose. As a result, the AG negotiated a reduced rental cost increase, saving the State \$40,000.
  - The Department of Agriculture and Markets (AGM) requested a \$150,000 contract for a logger training conference event. It appeared that State employees were to receive speaker fees. At OSC prompting, AGM removed inappropriate payments and better demonstrated why the specific vendor was selected without bid.
  - The Statewide Financial System (SFS) requested a new 3-year agreement for database administration consulting services without public advertising or bidding. OSC noted the services had not been competitively procured in several years. OSC approved the request for a shorter period to allow time for competitive bidding.

## 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. OSC regularly finds instances where vendors are not playing on a level field. For example:

- During contract review, OSC ensures that all vendors have the required Workers' Compensation and Disability Benefits insurance coverage. This important protection for workers also protects the State but can be viewed as a cost-savings for vendors who do not obtain or maintain the coverage. Likewise, OSC also identifies outstanding State, federal or municipal tax warrants or liens. Both of these cases illustrate how vendors may gain an unfair price advantage against other bidders. In addition, OSC's review may be the first step in getting a potential contractor to begin repayment of outstanding taxes or liens.
- During review of a DOT intercounty transit service contract, OSC found one subcontractor with 13 federal and State tax liens totaling over \$170,000, and a second subcontractor debarred by the NYS Workers Compensation Board. The subcontractors were replaced after issues could not be resolved.
- OSC reviewed two OCFS contracts with the same vendor and found that the vendor owed money to the Department of Labor (DOL). The vendor claimed it was unaware of the outstanding liability and promptly submitted full payment to DOL. OSC's analysis enabled the State to receive funds owed to it and the contracts to move forward.

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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:

- The Office of Alcohol and Substance Abuse Services (OASAS) submitted an exemption request to obtain temporary clinical physician services at one of its treatment centers whose ability to admit new patients was in jeopardy. The exemption request would allow OASAS to amend an existing contract to obtain a pre-qualified resource to provide the needed clinical services. Due to the nature of these services, OASAS requested an expedited review and OSC approved the exemption in one business day.
- The State Education Department (SED) requested an expedited review of a new professional licensure exam contract. Due to delays in executing the contract, the vendor advised SED it would no longer allow New York State residents to apply for the upcoming 2018 spring exam unless contract approval was received. OSC auditors worked to expedite the vendor responsibility and contract reviews and the contract was approved in three business days.
- SUNY Stony Brook requested an expedited review of a new contract for background checks of potential new employees. The new agreement was critical as Stony Brook could not hire new staff without the contract in place. OSC auditors worked to expedite their review and approved the contract three days prior to the requested deadline.
- OSC was notified of the urgent need to approve a revenue agreement between three SUNY Hospitals and an insurance company for the transfer of federal funds to SUNY for the federal Care Restructuring Pilots Program. OSC's contracts and legal staff worked with SUNY to pre-review SUNY's draft agreement to resolve any concerns prior to the contract submission. Per OSC's recommendation, SUNY submitted one agreement on behalf of the three hospitals. This transaction was received and approved the same day with a revenue value of \$186 million.
- OSC was notified that DOT faced eviction from temporary office space in Rochester unless an executed lease extension was delivered to the landlord the following day. The temporary offices were needed while fire damage at DOT's permanent Rochester location was repaired. The review was complicated by the fact that the original lease was not subject to OSC review. OSC reviewed both the original and the extension in less than one business day, enabling DOT to meet the urgent deadline.



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- OSC was asked to expedite a review of a \$2.9 million lease for an emergency equipment storage facility in Broome County. The previous lease agreement was annulled by the County with only 30 days' notice. The transaction was reviewed and completed in just one day.

## 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 practices 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, and for addressing situations where two or more bidders receive the same score 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.
- Reviewing proof of required insurance coverages, certifications, bonds or other credentials to avoid delaying critical services or interrupting the work, and to ensure that bidders are kept on an even playing field.
- Demonstrating 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 staff are trained in a wide variety of procurement methods and often review contracts with distinctive requirements or needs. For example, OSC:

- Shares information about vendor responsibility among agencies so all stakeholders can benefit from prior knowledge of contractors.
- 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.
- Reviews complex bid solicitations and bid evaluation tools in advance to help ensure that agencies will get the best value, while avoiding unexpected delays or an additional 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 an 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/>.

# 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 and our investments in data analytics and other state-of-the-art technologies has brought advanced fraud detection to State contracting.

The types of fraud and abuse in procurement and contracting are varied. 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.

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 adverse impacts on businesses and not-for-profit contractors when contracts are not processed timely.

The State Comptroller's role in the procurement cycle was established more than 100 years ago and has served taxpayers well. 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.

## Contact

Office of the New York State Comptroller  
110 State Street  
Albany, New York 12236  
(518) 474-4040  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

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