



NY GovBuy

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Office of
General Services



Purchasing in New York State



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Objective of New York State Procurement

The objective of New York State's procurement process is to facilitate each agency's mission while protecting the interest of the state and its taxpayers, and promoting fairness in contracting with the business community.

[New York State Procurement Guidelines](#)

How NYS Meets This Objective

In order to meet the objective of NYS Procurement, Agencies should follow these guidelines to help in the procurement process:

- Have a clear statement of product/service specifications
- Have specifications designed to ensure fair and open competition
 - guarding against favoritism, extravagance, fraud & corruption
- Have a balanced and fair methodology for evaluating offers and awarding contracts
 - established in advance of the receipt of offers
- Make awards to Responsive and Responsible Vendors
- Keep accurate Procurement Records, including information gathered and decisions made relating to the procurement

Determining Form, Function and Utility

- To apply the form, function and utility standard; the Agency's determination of need should be defined in terms of the minimal essential requirements by the agency (e.g. quality, quantity, delivery terms, packaging, performance standards, etc...).
- An Agency's minimal essential requirements should not be over or understated. It is important that the essential needs and related requirements are fully understood in order to choose the proper procurement vehicle in accordance with the order of statutory preference.

Purchasing Order

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Statutory Preference

- Statutory preference is accorded in the following order:
 - 1st Preferred Sources
 - 2nd OGS Centralized Contracts
 - 3rd Agency or Multi-Agency Contracts

1st Priority - Preferred Sources

- Commodities
 - 1st Corcraft
 - 2nd New York State Preferred Source Program for People Who are Blind (NYSPSP)
 - 3rd New York State Industries for the Disabled (NYSID), Qualified special employment program for the Mentally ill, Qualified Veterans Workshops
- Services - Preferred Sources that provide services have equal priority under State Finance Law (SFL).

2nd Priority - OGS Centralized Contracts

- State Finance Law requires agencies to use centralized contracts to purchase commodities and services that meet their agencies requirements with respect to form, function, and utility.
- Note: SDVOB set Aside Contracts can preempt OGS Centralized Contracts, but not Preferred Sources.

OGS Centralized Contracts

Example Contracts

- A/V Equipment
- Athletic Equipment
- Copy Paper
- Furniture
- HBITS
- Highway Materials
- Rock Salt
- Office Supplies
- Medical Equipment
- Fuels
- Rubbish Removal
- Administrative Services
- Umbrella
- Bank Card Services
- PBITS
- Elevator Maint.
- Telecommunications
- Printers
- Food

Contract Terms

- ~1500+ contracts; ~7,000+ Authorized Users
- Terms vary; may be awarded up to 5+ years
- Single award, multiple award, backdrop with RFQ/Mini-Bid
- Estimated quantities, IDIQ, Filled Requirements
- Sales result when purchases are made off the contract

OGS or Less

Many commodity contracts contain an “OGS or Less” clause

- Agencies can buy from suppliers other than those participating in a centralized contract when more beneficial to the acquiring state agency.
- This procedure applies only to products not available from a Preferred Source.
- OGS or Less cannot be used if the existing Agency specific contract or contract vendor will match price or terms
- More information on OGS or Less can be found at the following link:
<http://www.ogs.state.ny.us/PROCUREcounc/ogsorless.asp>



3rd Priority - Agency or Multi-Agency Contracts

- Discretionary Purchases
- Invitation for Bid (IFB)
- Request for Proposal (RFP)
- Single Source
- Sole Source
- Emergency Purchases
- Piggyback



Discretionary Purchasing

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Determine cost

- What is the estimated cost? Cost will determine if an agency can utilize its **Discretionary Purchasing Authority** or must conduct a **Formal Procurement**
- Consider whether extra costs apply such as shipping, inside delivery, setup, etc.
- The total costs need to be incorporated into the “One Year Rule”



One Year Rule

Determination of Discretionary Threshold Amount

State Finance Law § 163(6-b):

- State agencies must consider the total amount of expected purchases for the same commodity or service to be made within the twelve-month period from the date of purchase
- Expressly prohibits split ordering
- Cannot change or a renew a discretionary purchase if the change or renewal would bring the aggregate amount for the twelve-month period over the discretionary threshold



Discretionary Purchases

- Purchases of services and commodities without a formal competitive process
- Limits for general discretionary purchases:
 - **\$50,000**: State agency, department, board, officer, commission, or institution
 - **\$85,000**: Office of General Services
 - **\$125,000 / \$250,000**: State University of New York

Discretionary Purchases

- Exceptions to the general discretionary limits:
 - **M/WBEs:** Commodities or Services
 - **Small Businesses:** Commodities or Services
 - **SDVOBs:** Commodities or Services
 - **Recycled or Remanufactured:** Commodities or Technology
 - **Food “grown, produced or harvested” in NYS:** Commodities
- Purchases that fall under the above categories have a higher limit of **\$200,000**.

Limiting to M/WBEs and Small Businesses

- New York State Finance Law states that agencies may procure from M/WBEs or Small Businesses pursuant to the guidelines set by the State Procurement Council
- State Procurement Council Discretionary Spending Guidelines
 - Agencies may determine, based upon experience, knowledge and a current analysis, that it is appropriate to limit the discretionary purchase opportunity to M/WBEs or Small Businesses.

Minority/Women-Owned Business Enterprise

A Minority and/or Women-Owned Business must be certified by NYS Empire State Development in accordance with NYS Executive Law Article 15-A.

For information on the **certification** process, contact **Empire State Development** at mwbecertification@esd.ny.gov or visit the website <https://esd.ny.gov/doing-business-ny/mwbe>



New York State Small Businesses

A New York State Small Business is defined as:

- Resident to New York State
- Independently owned and operated
- 100 or fewer employees
- Not dominant in its field

There is no certification process for “New York State Small Business.”





Limiting to SDVOBs

- Chapter 569 of the Session Laws of 2015 extended State Finance Law § 163(6) discretionary purchasing authority to purchases from certified SDVOBs
- Commissioner of OGS given authority to create guidelines for “the process to be used in the exercise of discretionary authority” for SDVOBs [9 NYCRR 252.2(j)]





Service-Disabled Veteran Owned Business

- A Service Disabled Veteran Owned Business (SDVOB) must be certified by OGS pursuant to Executive Law Article 17-B
- For information about certifying as an SDVOB, please contact the OGS Division of Service-Disabled Veterans' Business Development at: <https://ogs.ny.gov/veterans>



Recycled/Remanufactured and NYS Food

- Recycled or Remanufactured Products:
“commodities or technology that is recycled or remanufactured”
- Food Grown, Produced or Harvested in New York:
“commodities that are food, including milk and milk products, grown, produced or harvested in New York State”
 - Agriculture & Markets “New York Grown & Certified Program” is an option for such purchases

Contract Reporter Advertisements

- All procurements by state agencies, including SUNY & CUNY, in excess of \$50,000 shall be advertised in the state's procurement opportunities newsletter in accordance with Article 4-C of the Economic Development Law.

Advertising – Approved Scripts

- Best Practices Language #1
 - Agency X intends to purchase (**insert project description, e.g., 1,000 widgets**) pursuant to its discretionary purchasing authority under State Finance Law §163(6), which authorizes purchases without a formal competitive process in certain circumstances, including purchases from New York State small businesses, from businesses certified pursuant to Article 15-A of the New York State Executive Law, if applicable, from businesses selling commodities or technology that are recycled or remanufactured or commodities that are food, including milk and milk products, grown, produced or harvested in New York State. Interested parties should contact (**agency designated contact/purchasing officer**) to discuss this opportunity.

Competitive Procurements

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Invitation for Bid

- Used for commodities
- Ideal when Requirements can be converted into precise measurable specifications
- Awarded based on lowest price
- Awarded to a responsive and responsible bidder

Request for Proposal

- Used for Service contracts
- Awarded on the basis of best value
- Optimizes quality, cost and efficiency
- Reflects, wherever possible, objective and quantifiable analysis
- Awarded to a responsive and responsible bidder



Request for Proposal

- The RFP must include:
 - Method of Award
 - The relative importance and/or weight of cost and overall technical criterion for evaluating offers
- The evaluation criteria consists of:
 - Administrative (**Pass/Fail**) Ensures the vendor submitted all required documentation
 - Technical (**Scored**) Evaluation Team reviews the proposals and provides a score
 - Financial (**Scored**) Separate evaluator scores the cost proposals based on a pre-defined formula



- Possible technical scoring breakdown

Evaluators Assessment of Specification	Point Value
Substantially Exceeds Expectations	5 points
Exceeds Expectations	4 points
Meets Expectations	3 points
Below Expectations	2 points
Substantially Below Expectations	1 points
Specification not addressed or met at all	0 points

- Recommended cost scoring formula
 - Max Points x (Low Bid / Bid Being Evaluated)

Request for Proposal

- Agencies should document in the procurement record, and in advance of the initial receipt of offers:
 - the determination of the evaluation criteria, which whenever possible, shall be quantifiable;
 - the process to be used in the determination of best value; and
 - the manner in which the evaluation process and selection shall be conducted

Other Procurement Vehicles

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Single Source / Sole Source

- Non-competitive procurements where the Agency selects one vendor to award
 - Sole Source: only one offerer is capable of supplying the required commodities or services
 - Single Source: although two or more offers can supply the required commodities or services, the agency, with proper justification, selects one offerer over another based upon a written finding setting forth the material and substantive reasons.

Single Source / Sole Source

- Except where otherwise provided by law, procurements shall be competitive, and state agencies shall conduct formal competitive procurements to the maximum extent practicable.
- Contract Reporter Exemption Requests (CRER) must be submitted to and approved by OSC prior to entering into a contract. The request must include:
 - Reason why agency can't bid
 - Justification of need
 - Justification for the selection of the vendor
 - Justification for reasonableness of price

Single Source / Sole Source

- Solicitation of Interest
 - Announce the opportunity
 - Describe required activities
 - Identify minimum qualifications
 - Explain how to apply

Emergency Procurements

- An emergency is “an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.”
 - Agencies can purchase without a formal competitive procurement, but should obtain 3 quotes if possible.
 - OSC will accept oral requests, provided the agency follows up immediately in writing clearly stating the nature of the emergency.



Piggyback

- Using an existing contract to acquire the same commodities or services from another public entity's contract.
 - Agency must first seek approval from OGS
 - Agency should consider discounts based on the increase in spending
 - Agency must also receive OSC approval

Resources

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Reference Materials – Preferred Source Links

- Dept. of Corrections & Community Supervision (Corcraft):
www.corcraft.org
- NYS Preferred Source Program for People who are Blind:
www.nyspsp.org
- NYS Industries for the Disabled: www.nysid.org
- General Preferred Source Information:
<https://ogs.ny.gov/procurement/preferred-sources>



Reference Materials

- Procurement Council Guidelines:
<https://web.archive.org/web/20161221115717/http://ogs.ny.gov/BU/PC/Docs/Guidelines.pdf>
- State Finance Law, Article XI:
<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>
- NYS Procurement Rules and Guidelines:
<https://ogs.ny.gov/procurement/nys-procurement-council>

Reference Materials

- Guide to Financial Operations:
<https://www.osc.state.ny.us/agencies/guide/MyWebHelp/>
- OGS Business Service Center: <https://bsc.ogs.ny.gov/>
- Guidelines for Purchasing NYS Food Products:
<https://ogs.ny.gov/system/files/documents/2018/09/nysfoodpurchaseguidelines.pdf>