New York State Procurement Guidelines

September 2023

(Revised May 2026)

Adopted and Approved by

MAY 13 2026

the NYS Procurement Council

Table of Contents

Section I: Overview 3
- **1.1 Introduction and Purpose** 3
- **1.2 Terminology** 4
- **1.3 Application and Scope of the Procurement Guidelines** 4
- **1.4 Operating Principles** 5
- **1.5 Procurement Ethics** 6
- **1.6 Procurement Lobbying Law** 6

Section II: Procurement Basics 7
- **2.1 Overview of Procurement Tools** 7
- **2.2 Contract Document Basics** 7
- **2.3 Choosing a Procurement Method and the Order of Purchasing Priority** 7
  - 2.3.1 Preferred Source Offerings 10
  - 2.3.2 OGS Centralized Contracts 10
  - 2.3.3 Established Agency or Multi Agency Contracts 12
  - 2.3.4 Other Contract Methods Available to Agencies 12
- **2.4 Procurement Vehicles** 17
  - 2.4.1 Purchase Orders 17
  - 2.4.2 Purchase Authorizations 17
  - 2.4.3 Intergovernmental Agreements 17

Section III: Pre-Solicitation and Planning 18
- **3.1 Knowing the Business Needs** 18
- **3.2 Proper Planning** 18
- **3.3 Gathering and Exchanging Information Prior to Solicitation** 19
  - 3.3.1 Roundtable Sessions 19
  - 3.3.2 Request for Information 19
  - 3.3.3 Request for Comment 19
  - 3.3.4 Conducting a Solicitation of Interest 20
- **3.4 Downstream Prohibition** 20
- **3.5 Discussion with the Office of the State Comptroller** 20
- **3.6 After the Scope is Finalized** 20

Section IV: Solicitation Development and Content 21
- **4.1 Scope of Work** 21
- **4.2 Specifications** 21
- **4.3 Minimum Bidder Qualifications** 21
- **4.4 Submissions and Evaluations** 22
- **4.5 Method of Award** 22
  - 4.5.1 Lowest Price Solicitation 22
  - 4.5.2 Best Value Solicitation 22
  - 4.5.3 Participation by Minority Group Members and Women with Respect to State Contracts 23

4.5.4 Tie Bids 23
4.6 Pricing Submissions 23
4.7 Estimates 24
4.8 Firm Offer 24
4.9 Required Document Submissions 24
4.10 Order of Precedence/Conflict of Terms 25
4.11 Timeline and Calendar of Events 25
4.12 Mandatory Clauses 26
4.13 Workers' Compensation and Disability Insurance 27
4.14 Additional Insurance Requirements 28
4.15 State Reserved Rights 28
Section V: Solicitation Process 29
5.1 Advertising Procurement Opportunities 29
5.2 Restricted Period/Designated Contacts 30
5.3 Conduct Site Visits and Pre-Bid Conferences 30
5.4 Solicitation Instructions 31
Section VI: Evaluation and Award 31
6.1 Administrative Review to Verify Responsiveness 31
6.2 Evaluation 32
6.2.1 Low Bid Evaluation 32
6.2.2 Best Value Evaluation 32
6.2.3 Evaluation Instruments 34
6.3 Reference Checks 34
6.4 MWBE/SDVOB Compliance Review 34
6.5 Disqualification Determination 34
6.6 Determination of Vendor Responsibility 34
6.7 Recommendation and Tentative Award/Non-Award Letters 35
6.8 Negotiations 36
6.9 Review of Terms and Conditions and Deviations Proposed by Bidder 36
6.10 Drafting Contract for Execution 36
6.11 Create the Procurement Record 37
6.12 Obtain Approvals 37
6.13 Contract Kickoff Meeting and Begin Performance 38
Section VII: Post Award & Contract Management 38
7.1 Contract Administration and Monitoring 38
7.2 Effective Contract Management 39
Glossary 41
Executive Orders 48

Section I: Overview

1.1 Introduction and Purpose

The Procurement Guidelines ("Guidelines") presented in this document are established by the ***State Procurement Council*** pursuant to State Finance Law § 161(2)(d). The Guidelines are designed to assist State Agencies in conducting ***procurements*** efficiently and effectively by providing ***Agency*** program and fiscal staff with a source of guidance about State procurement laws, rules, regulations, policies and practices. Deviations from these Guidelines should be discussed with appropriate ***Control Agencies***. The ***Office of the State Comptroller ("OSC")*** New York State Guide to Financial Operations (GFO) also provides guidance that may be relevant to procurement professionals in New York State government.

New York State ("State") Agencies must procure ***commodities***, ***services***, and ***technology*** in accordance with Article 11 of the New York State Finance Law, current statutes, regulations***,*** ***executive orders***, and other actions with the force of law. A list of current executive orders can be found at the end of this document.

State procurement must facilitate each Agency's mission while protecting the interests of the State and its taxpayers and promoting fairness and transparency in contracting and purchasing with the business community. The Guidelines are intended to advance these goals by encouraging Agencies to adopt and implement appropriate procurement practices consistent with State statutes and policies (State Finance Law § 163(2)).

The State's procurement policies form a framework for conducting procurements and establishing ***contracts***. Policies address such issues as ensuring sufficient competition; preserving fair and open competition; establishing ***vendor*** responsibility; providing for participation of ***Preferred Sources***, State-certified ***minority- and women-owned business enterprises ("MWBEs")***, State-certified ***service-disabled veteran-owned businesses ("SDVOBs")***, ***NYS small business enterprises ("SBEs")***; promoting local food growers and local plant fiber products and textiles ("NYS Textiles"); and protecting human health and the environment. When conducting procurements, each Agency may have supplemental policies and requirements, in addition to the Guidelines, that should also be reviewed and followed.

New York State procurement policies and practitioners should embody the values for Public Procurement of:

Accountability: Taking ownership and being responsible to all stakeholders for our actions. This value is essential to preserve the public trust and protect the public interest.

Ethics: Doing the right thing. This value is essential to deserve the public's trust. Acting with transparency and fairness when conducting procurements.

Impartiality: Unbiased decision making and actions. This value is essential to ensure fairness for the public good.

Professionalism: Upholding high standards of job performance and ethical behavior. This

value is essential to balance diverse public interests.

Service: Obligation to assist stakeholders. This value is essential to support the public good.

Transparency: Easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds.

1.2 Terminology

Procurement Practitioners should be familiar with the vocabulary that is fundamental to understanding and properly performing procurements. In these Guidelines, important terms will appear in blue italicized boldface font upon first use (as demonstrated in this section) and are defined in the Glossary.

An entity that provides commodities, services, or technology may be referred to as a vendor, offeror, ***bidder***, proposer, supplier, or ***contractor***. Similarly, the words "service" or "services," when used in these Guidelines, are meant to include both services and technology (as each term is separately defined in the glossary), unless the context indicates that the meaning is expressly directed at one or the other term. Additionally, the words "products" and "goods" are used to mean commodities (State Finance Law § 160(7)).

Unless otherwise noted, all references to named laws (e.g., State Finance Law, Economic Development Law) are to the current statutes in effect at the time these Guidelines are issued.

1.3 Application and Scope of the Procurement Guidelines

The Procurement Guidelines are designed to apply to a wide range of procurements, from basic to the very complex. The applicability of specific chapters, sections, and provisions will vary depending on the nature, objectives, and particular circumstances of each procurement.

These Procurement Guidelines apply primarily to procurements conducted under Article 11 of the State Finance Law. Various other statutes establish different procurement laws, rules, and processes for specific types of procurements. Types of procurements include, but are not limited to:

1. ***Revenue contracts*** covered by State Finance Law § 112(3)
2. The priority of vendors who are blind, licensed by the Business Enterprise Program established by the New York State Commission for the Blind, pursuant to McKinney's Unconsolidated Laws § 8714-a, to operate newsstands and vending machines.
3. Construction contracts covered by Public Buildings Law § 8, Highway Law § 38, and Education Law § 376.

4. Grants and contracts with not-for-profit organizations covered by Article 11-B of the State Finance Law.
5. Contracts for architectural, surveying, landscape architectural, geological, or engineering services covered under State Finance Law § 136-a.
6. Leases, easements, and other transactions made in accordance with the Public Buildings Law, the Public Lands Law, or the Real Property Law.
7. Monetary thresholds and approval processes for purchases made under the SUNY Flex legislation (Education Law §§ 355(5) and 355(16)) and CUNY Flex legislation (Education Law § 6218).

1.4 Operating Principles

The State's procurement process is designed to:

1. Ensure fair and open competition.
2. Guard against favoritism, improvidence, extravagance, fraud, and corruption.
3. Ensure compliance with statutory requirements pertaining to Preferred Sources, State-certified MWBE, SDVOB, and NYS small businesses, promotion of local food growers, protection of human health and the environment, and NYS Textiles.
4. Ensure that the results meet Agency needs effectively, efficiently, and with integrity.
5. Provide checks and balances to regulate and oversee Agency procurement activities.
6. Protect the interests of the State and its taxpayers.

Competition in the procurement process serves both State Agencies and potential bidders by ensuring that the procurement process produces an optimal solution at a reasonable ***price*** and allowing qualified vendors an opportunity to obtain State business.

The primary responsibility for procurement decisions rests with the State Agency procuring the commodity, service, or technology. In addition to complying with existing statutory and regulatory requirements, State Agencies must conduct procurements in accordance with the following general principles:

1. Define the process by which the procurement is being conducted.
2. Disclose the general process to potential bidders.
3. Make reasonable efforts to ensure that vendors, including, but not limited to, State-certified MWBEs, SDVOBs, and SBEs are aware of opportunities to compete for State business.

4. Adhere to the process while conducting the procurement.
5. Document the process, including information gathering and decisions made relating to the procurement.

1.5 Procurement Ethics

Procurements result in an expenditure of public monies, and public employees must always ensure that all procurements are conducted in a manner that ensures fairness, competition, and transparency towards all vendors. Actions prohibited by ethics laws include providing a specific vendor with information that is not available to other vendors, accepting a gift, or having a meal with a potential vendor could be construed as showing favoritism to a vendor, and may violate State law. Certain meetings with existing or potential vendors may also need to be reported in the State's online ***Project Sunlight*** database. Questions regarding procurement ethics should be directed to the Agency ethics officer and/or the Commission on Ethics and Lobbying in Government. Awards may not be directed to a specific vendor that is not the responsive and responsible low bidder or ***best value*** offeror.

Information on the Public Officers Law is available at: https://ethics.ny.gov/system/files/documents/2024/10/coelig-pol-other-ethics-laws-regs-book-october-2024.pdf

Information on the Commission on Ethics and Lobbying in Government is available at: https://ethics.ny.gov/

Information on Project Sunlight reporting is available at: https://projectsunlight.ny.gov/ and https://projectsunlight.ny.gov/public/Home/Resources

1.6 Procurement Lobbying Law

State Finance Law §§ 139-j and 139-k impose certain restrictions on communications between an Agency and a vendor during the procurement process. A vendor is restricted from making ***contacts*** (defined in the law as communications intended to influence the procurement) from the date of the earliest publication of the ***solicitation*** through the date of the final award, and, if applicable, approval of the contract by OSC***,*** to other than designated staff (as identified by the Agency). The interval between these points is known as the ***restricted period***. Certain exceptions to this restriction are set forth in State Finance Law § 139-j(3)(a), such as communication during contract negotiations.

Procurement staff are also required to obtain specific information (see link below) when contacted during the restricted period and to make a finding that the vendor has not been deemed non-***responsible*** for violating the Procurement Lobbying Law. A single finding of non-responsibility can result in rejection for a contract award. In the event of two such findings within a four-year period, the vendor will be debarred from governmental procurement contracts for four years.

Further information about these requirements can be found on the OGS website at: https://ogs.ny.gov/acpl

Section II: Procurement Basics

2.1 Overview of Procurement Tools

State Agencies purchase commodities, services, and technology to address needs or solve problems in the performance of an Agency's mission. Needs and problems vary with respect to how well they can be defined. Some are standardized and are common among most, if not all, Agencies. Others are unique to a given Agency and range from simple, routine concerns to complicated scenarios requiring complex solutions.

To address this array of conditions, a variety of procurement tools and methodologies are available. Among the most common are Preferred Source offerings; SDVOB set asides; Office of General Services ("OGS") ***centralized contracts***; Agency or multi-Agency established contracts resulting from competitive ***bids*** conducted by State Agencies; ***Sole Source*** contracts; ***single source*** contracts; ***piggyback contracts***; ***emergency*** contracts; and ***discretionary purchases***. These and other procurement tools are discussed in greater detail later in this chapter.

2.2 Contract Document Basics

Contracts are written agreements between a buyer (the State) and a seller (the vendor). These documents specify various terms and conditions to which the parties must adhere. Types of these terms and conditions include, but are not limited to, the following:

1. Price
2. Delivery terms
3. Description of the commodity or service being procured
4. Payment terms
5. Insurance requirements
6. Performance requirements
7. Appendix A
8. Duration of the contract
9. Liability clauses and any other requirements of either the buyer or seller
10. Agency-specific requirements

OGS may issue centralized contracts on behalf of all Agencies or Agencies may issue their own contracts to meet their unique needs.

2.3 Choosing a Procurement Method and the Order of Purchasing Priority

As noted, State Agencies undertake procurements to address a wide range of needs. Before proceeding, the Agency should confirm that there is not a pre-existing contract that

will meet its needs. To meet varying needs and ***form, function, and utility*** requirements, an Agency must first identify its specific needs, estimate ***costs***, perform market research, consider relevant State requirements and goals (e.g., recycled content, GreenNY specifications), and then follow the order of priority set forth below (State Finance Law § 163(3) & (4)).

NOTE: An Agency may conduct an SDVOB set-aside procurement at any time after considering a Preferred Source without having to comply with the order of priority for selecting a procurement set forth below.

For more information see the Guidelines for the Use of Set Aside Contracts with SDVOBs on the OGS website at: https://ogs.ny.gov/guidelines-use-set-aside-contracts-service-disabled-veteran-owned-businesses

NOTE: As of September 2022, Executive Order 22 requires that all 75 of its Affected Entities shall follow the GreenNY procurement specifications approved by the GreenNY Council when procuring under existing contracts or when developing new solicitations and contracts for the procurement of commodities, services, and technology, or where applicable, in the development of new public works solicitations and contracts. These Affected Entities shall consider compliance with this executive order as part of their form, function and utility requirements.

First: Preferred source offerings.

Second: OGS centralized services and technology contracts (except by State Agencies where the head of the Agency is not appointed by the governor, including but not limited to the State Education Department, the ***Office of the Attorney General ("OAG")***, and the OSC); OGS centralized commodity contracts.*

Third: Agency or multi-Agency established contracts.

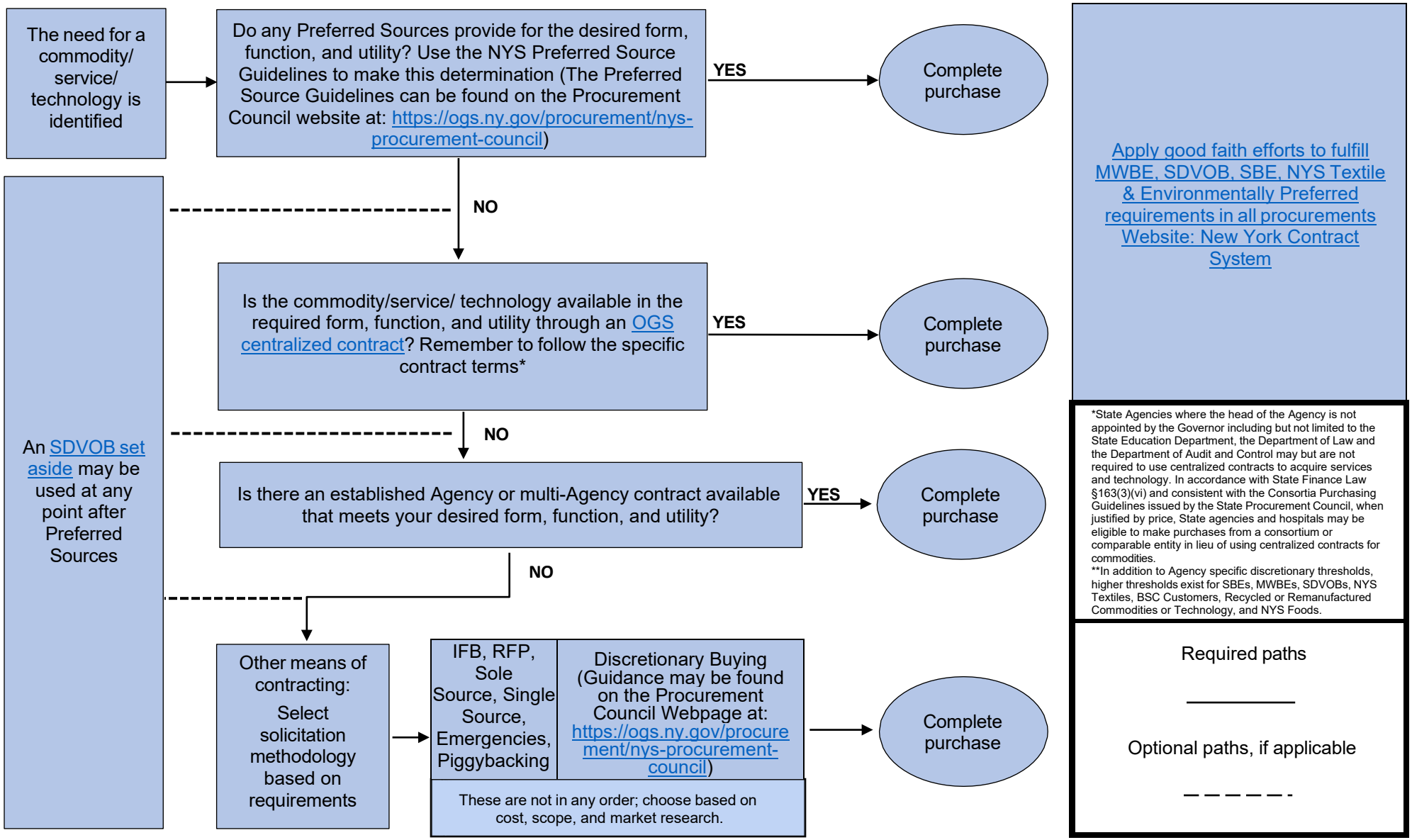
Fourth: Other procurement methods, including but, not limited to:

- Competitively bid procurement
- Sole or single source procurement
- Piggybacking (using contracts held by other states or other existing non-state entity contracts)
- Consortium contracts (The NYS Consortia Purchasing Guidelines can be found on the NYS Procurement Council webpage at: https://ogs.ny.gov/procurement/nys-procurement-council)
- Emergency purchases
- Discretionary purchases

*In accordance with State Finance Law §163(3)(vi) and consistent with the Consortia Purchasing Guidelines issued by the State Procurement Council, when justified by price, State agencies and hospitals may be eligible to make purchases from a consortium or comparable entity in lieu of using centralized contracts for commodities.

A flowchart titled **"Selecting a Procurement Method"** follows.

Selecting a Procurement Method



2.3.1 Preferred Source Offerings

Currently, the Preferred Sources are (i) the Correctional Industries Program (known as "Corcraft"), which is run by the Department of Corrections and Community Supervision ("DOCCS"); (ii) the New York State Preferred Source Program for People Who are Blind ("NYSPSP"); and (iii) the New York State Industries for the Disabled, Inc. ("NYSID").

When an approved commodity or service desired by a State Agency, political subdivision, or public benefit corporation (including most public authorities) is available from a Preferred Source in the form, function, and utility required, and the price is no more than 15% above the prevailing market rate (or, in the case of Corcraft, the price of the commodity does not exceed a reasonable, fair market rate as determined by DOCCS), the State Agency must purchase that commodity or service from a Preferred Source. When doing so, Agencies must adhere to the priority that has been accorded to the Preferred Sources in State Finance Law § 162, as follows:

With respect to approved commodities, Agencies must purchase from Preferred Sources in the following prioritized order, if available:

First: From Corcraft

Second: From NYSPSP

Third: Equal priority is accorded to NYSID and ***qualified veterans' entities***

With respect to approved services, if more than one Preferred Source meets the Agency's form, function, and utility requirements, equal priority shall be accorded to the services rendered and offered for sale among the approved charitable, non-profit making Agencies for the blind, other disabled persons, and qualified veterans' entities. If more than one Preferred Source meets the Agency's requirements, cost shall be the determining factor.

NOTE: Corcraft is not a Preferred Source option for the procurement of services. However, services offered by Corcraft may be obtained by a State Agency through an interagency Memorandum of Understanding ("MOU") with Corcraft as a division of DOCCS. Contact Corcraft at info.corcraft@doccs.ny.gov to discuss engaging in an MOU for Corcraft services.

More information and the list of approved Preferred Source offerings can be found on the OGS website at: https://ogs.ny.gov/procurement/preferred-sources

2.3.2 OGS Centralized Contracts

OGS establishes centralized contracts for commodities, services, and technology. There are currently more than 1,500 centralized contracts in place.

State Finance Law requires that Agencies utilize OGS centralized contracts to purchase commodities, services, and technology that meet the Agency's form, function, and utility requirements. State Agencies where the head of the Agency is not appointed by the

governor, including but not limited to the State Education Department, OAG, and OSC, may, but are not required to use OGS services and technology contracts.

Agencies, except State agencies where the head of the agency is not appointed by the governor, including but not limited to the State Education Department, OAG, and OSC, are also required to use OGS services and technology contracts that meet the agency's requirements with respect to form, function and utility. For the purchase of commodities, services, or technology available from an OGS centralized contract, the Agency must review and follow all instructions for that specific centralized contract. Agencies should consider purchasing from MWBE and SDVOB vendors, authorized resellers, and subcontractors if available through the OGS contracts to meet Agency vendor diversity goals.

Additionally, OGS establishes contracts that prequalify vendors for the provision of services. These contracts establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with State procurements, such as advertisement in the New York State Contract Reporter, vendor responsibility determination, and sales tax certification.

To use centralized contracts, the processes to be followed are set forth either in the contract or the guidelines associated with that contract on the OGS website. Some centralized contracts may require additional competitive procurement processes at the ***authorized user*** level (e.g., a ***mini-bid,*** or request for quote). Agencies must assess MWBE and SDVOB goals as part of the competitive process if required by the centralized contract.

An authorized user and vendor cannot amend the terms and conditions of a centralized contract, but may, if permitted by the contract, agree to additional terms and conditions more favorable to the authorized user only (e.g., delivery terms, longer warranty period, no-cost maintenance). Authorized users may not agree to pricing that is higher than the established centralized contract pricing, but are encouraged to negotiate lower pricing. Authorized users may only negotiate changes allowed by the contract.

Useful information for authorized users can be found on the OGS website:
OGS Centralized Contracts - https://ogs.ny.gov/procurement/ogs-centralized-contracts

OGS or Less

In addition, pursuant to State Finance Law § 163(3)(a)(v), OGS centralized commodities contracts that contain a clause known as "OGS or Less" may allow an Agency to obtain needed commodities from a non-contract vendor in order to take advantage of non-contract savings that may develop in the marketplace. "OGS or Less" purchases may not be made if the commodities are available from:

1. Legally established Preferred Sources in the form, function, and utility required.
2. State contracts based on ***filed requirements*** (e.g., fuel, oil, etc.).
3. ***Agency-specific contracts.***

After determining that the needed commodity cannot be obtained from these sources, the Agency must determine, and document in the ***procurement record***, that the purchase price, including delivery, warranty, and other relevant terms, offered by the non-contract vendor is more economically beneficial than what is offered on OGS centralized contracts for a commodity substantially similar in form, function, and utility. Agencies must not solicit multiple offers from the same vendor and must not create a bidding war. State vendors must be allowed a minimum of two business days to match the lower non-contract price. If the State vendor provides written confirmation that it will match the lower price, the Agency proceeds with the purchase in accordance with Agency purchasing procedures. If the State vendor is unable or unwilling to match the lower price, the Agency must document this in the procurement record, and in lieu of purchasing the commodity from the OGS centralized vendor at the OGS centralized contract price, may procure through either a discretionary or competitive procurement, as applicable.

2.3.3 Established Agency or Multi Agency Contracts

To avoid duplication of government processes, the order of priority recognizes a State Agency's ability to leverage and adopt an already existing competitively established Agency or multi-Agency contract to purchase commodities and services. Typically, commodities can be obtained using a Purchase Order or a Purchase Authorization. As with other forms of State procurement, contracting under this methodology remains subject to internal and external review and approval by control agencies, and must be consistent with the policies (current statutes, regulations, executive orders, and other actions with the force of law in New York State) and principles of government public contracting (listed in Section 1.1).

2.3.4 Other Contract Methods Available to Agencies

These are new contracts to be established by an Agency or multiple Agencies to procure commodities, services, or technology. They enumerate the specific terms and conditions binding both the vendor and the State. These contracts are usually in effect for multiple years. More guidance on establishing a contract is provided herein. The methods below are to be used when other methods for procurement do not meet an Agency's required form, function, and utility.

1. **Competitively Bid Procurement:** A procurement awarded pursuant to a low bid or best value solicitation. This type of procurement attempts to procure goods and services of improved quality at a reduced cost through engaging potential vendors in competition.

2. **Sole Source Procurement:** A Sole Source procurement is one in which only one bidder can supply the commodities or services required by an Agency. In accordance with State Finance Law § 163(10)(b)(i) the Agency must document why the proposed bidder is the only viable source for the commodities and/or services needed by the Agency. Prior to proceeding with a Sole Source procurement, OSC pre-approval must be obtained for a Sole Source procurement if the value is over the Agency's contract approval threshold as set forth in State Finance Law § 112. The Agency must submit a Contract Reporter Exemption

Request (CRER) to OSC for pre-approval, as well as publish the Sole Source award notification on the New York State Contract Reporter (NYSCR). State Agencies shall minimize the use of sole source procurements and shall use sole source procurements only when a formal competitive process is not feasible. State Agencies shall document in the procurement record the circumstances and the material and substantial reasons for a sole source justification.

3. **Single Source Procurement:** A single source procurement is one in which, although there are two or more potential bidders, the Agency has determined that it is in the best interest of the State to procure from a particular bidder without conducting a formal competitive procurement. In accordance with State Finance Law § 163(10)(b)(ii), the term of a single source procurement shall be limited to the minimum period of time necessary to ameliorate the circumstances which created the material and substantial reasons for the single source award. OSC approval must be obtained for a single source procurement if the value is over the Agency's contract approval threshold as set forth in State Finance Law § 112. The Agency must submit a Contract Reporter Exemption Request (CRER) to OSC for pre-approval, as well as publish the Sole Source award notification on the New York State Contract Reporter (NYSCR). Per State Finance Law §163(10)(b)(ii), State Agencies shall minimize the use of single source procurements and shall use single source procurements only when a formal competitive process is not feasible. State Agencies shall document in the procurement record the circumstances and the material and substantial reasons why a formal competitive process is not feasible.

Per State Finance Law § 163 (10)(b)(i): Single or sole source procurements for services or commodities, or procurements made to meet emergencies arising from unforeseen causes, may be made without a formal competitive process and shall only be made under unusual circumstances and shall include a determination by the commissioner or the state agency that the specifications or requirements for said purchase have been designed in a fair and equitable manner. The purchasing agency shall document in the procurement record, subject to review by the state comptroller, the basis for a determination to purchase from a single source or sole source, or the nature of the emergency giving rise to the procurement.

4. **Piggyback Procurement:** At times, an Agency may find it more efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established by OGS in the "Contract 'Piggybacking' Guidelines" State Finance Law § 163(10)(e)."

When using this form of procurement, the requesting Agency should examine and weigh the factors below in order to determine the appropriateness of piggybacking established contracts as a preferred methodology over other contracting alternatives:

- **Subject Matter Comparison**: There should be an equivalency between the product or service sought and the original contract which should reflect your Agency's form, function, and utility requirements. Does the existing contract encompass the product or service sought? Did it anticipate the possibility of a contract extension? All relevant factors in the proposed extension procurement (including but not limited to price, quality, and nature of deliverable) should be clearly identified and compared to the original procurement.

- **Procurement Method**: The size and scope of the new contract should be evaluated in comparison to the original contract and its method of award. Does the proposed use significantly unbalance the original scope, or change the nature, quantity, and scope of the original contract? Could a substantially different procurement response or increased bidder pool involving greater competition reasonably be expected based upon the volume of your proposed request?

- **Notice to Originating Agency**: Where the subject of the original procurement is a New York State Agency-specific contract, the original contracting entity must be contacted and advised of the intended use. Concerns about the intended use, including the diminution of supply and vendor capacity, must be forwarded to OGS with the request for approval. Where the requesting Agency proposes using an amendment to an existing contract, consent of the originating Agency must be obtained. Notification to the originating Agency is not necessary for centralized contracts open to multiple entities.

- **Consent of Vendor & Terms of Use**: The vendor's consent to the request must be in written legal form (contract, letter agreement, etc.), separate from a purchase order, which sets forth the agreed terms of the request. A decision on whether to amend the original agreement or to execute a separate, independent contract based on the original contract must be considered based on your facts and circumstances. In either event, the legal form should set forth, not only the agreed terms of the contract, but also its effect on the original agreement, including liability for default, and aggregation of volume and pricing discounts for the intended procurement as well as for subsequent procurements under the original agreement.

- **Absence of Other Acceptable Established Contracting Alternatives**: Why are established Agency or multi-Agency contracts the appropriate mechanism to use for this procurement (i.e., timing, level playing field, nature of use)? Were other procurement methodologies considered? Are there any special, unusual, or exigent market circumstances underlying this extension request?

- **Pricing Justification**: Similar to other methods of procurement, your Agency must document that the price for the proposed contract is reasonable under the circumstances. You should indicate whether pricing concessions have been requested and obtained from the vendor based on the increased volume of purchases under the agreement.

OGS Review: Prior to making a purchase, the Agency must submit a Contract Use Request Form, along with a copy of the contract and supporting documentation, to OGS for review and approval.

The OGS Contract Use Request Form can be found on the OGS website at:
https://ogs.ny.gov/procurement/contract-use-request-form

The Piggybacking Guidelines can be found on the OGS website at:
https://ogs.ny.gov/procurement/piggybacking-using-other-existing-contracts-0

NOTE: The Agency must seek prior approval for the use of a piggyback contract from OGS. Finally, the Agency must create an Agency New York State contract and obtain all approvals necessary for the specified contract value (e.g. OAG and OSC approval).

5. **Consortia Purchasing:** To provide an alternative method of purchasing, §163(3) of the

State Finance Law allows an agency to purchase from a consortia contract when justified by price. A consortium is defined as like entities which agree to collectively purchase commodities at a lower price than would be otherwise achievable through purchase by such entities individually. All State agencies, hospitals and facilities managed and controlled by State agencies pursuant to Public Health Law § 2803(a) are eligible to make consortia purchases. For more information on consortia purchasing, please see the link below.

The Consortia Purchasing Guidelines can be found on the Procurement Council webpage at: https://ogs.ny.gov/procurement/nys-procurement-council

NOTE: In accordance with State Finance Law §163(3)(vi) and consistent with the Consortia Purchasing Guidelines issued by the State Procurement Council, when justified by price, State agencies and hospitals may be eligible to make purchases from a consortium or comparable entity in lieu of using centralized contracts for commodities.

6. **Emergency Procurements**: An emergency procurement is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. Where an emergency exists, an Agency may issue procurement contracts without complying with formal competitive bidding requirements. However, an Agency should make a reasonable attempt to obtain at least three oral quotes. An Agency's failure to properly plan in advance – which then results in a situation where normal practices cannot be followed – does not constitute an emergency. OSC approval must be obtained for an emergency procurement if the value is over the Agency's contract approval threshold as set forth in State Finance Law § 112. In addition, if the Agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption. State Agencies shall minimize the use of emergency procurements and shall use emergency procurements only when a formal competitive process is not feasible. State Agencies shall document in the procurement record the circumstances and the material and substantial reasons why a formal competitive process is not feasible.

7. **Discretionary purchases:** Procurements made below statutorily established thresholds and at the discretion of the Agency, without the need for a formal competitive procurement process. The use of discretionary purchasing streamlines the procurement process. Discretionary purchasing may provide unique and significant opportunities for MWBEs, SDVOBs, and SBEs to obtain State contracts and assist an Agency in achieving its MWBE or SDVOB goals. In addition, discretionary purchasing can improve opportunities for NYS small businesses to secure business with the State and promote the use of ***recycled*** or ***remanufactured commodities*** or technology and purchase of NYS grown, produced, or harvested food, including milk and milk products, and NYS Textiles. For specific monetary thresholds for discretionary purchases see the guidance below.

For more information, visit the following websites:

Discretionary Thresholds - https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi2a-thresholds

MWBEs - https://ny.newnycontracts.com/

SDVOBs - https://sdves.ogs.ny.gov/business-search

Food (Guidelines for Purchasing New York State Food Products found on this page)– https://ogs.ny.gov/procurement/nys-food-purchase-report-and-guidelines

To determine the discretionary threshold amount, the State agency shall consider the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within the 12-month period commencing on the date of purchase (State Finance Law § 163(6-b)). If the Agency anticipates it will be purchasing the same commodities and/or services for more than 12 months, consideration should be given to a multi-year competitive procurement to secure favorable pricing and/or terms and conditions.

When contemplating any discretionary purchase, the Agency must first undertake an analysis to determine whether its needs can best be met by acquiring through the Preferred Source program. If that is not possible, the Agency may consider an SDVOB set-aside contract. If the procurement is for a commodity, the Agency must make the purchase using an OGS centralized commodity contract if it meets the Agency's form, function, and utility needs. If the procurement is for a service or technology, the Agency, except State Agencies where the head of the Agency is not appointed by the governor, including but not limited to the State Education Department, OAG, and OSC, must make the purchase using an OGS centralized services or technology contract if it will meet the Agency's form, function, and utility needs.

For useful information regarding discretionary purchasing, visit the following websites:

BSC website - https://bsc.ogs.ny.gov/plan-your-purchase

Discretionary Purchasing Guidelines (linked on the Procurement Council webpage) - https://ogs.ny.gov/procurement/nys-procurement-council

When making a discretionary purchase, an Agency must:

1. Ensure that the commodities and services acquired meet their form, function, and utility needs, including relevant State law and policy requirements.

2. Determine whether there are qualified MWBE, SDVOB, SBE, manufacturers of recycled or remanufactured commodities or technology, NYS Textiles, or NYS food or milk producers, to provide the products or services requested. Per State Finance Law § 163 (6-c) for the purchase of commodities that are food, including milk and milk products, grown, produced or harvested in New York state, or NYS Textiles, where such commodities exceed fifty thousand dollars in value, state Agencies must advertise the discretionary purchase on the state Agency website for a reasonable period of time and make the discretionary purchase based on the lowest price that meets the state Agency's form, function and utility.

3. Document and justify the selection of the bidder.

4. Document and justify the reasonableness of the price to be paid.

5. Buy only from a Responsible bidder.

6. Comply with the Agency's internal policies and procedures.

2.4 Procurement Vehicles

When formalizing a procurement, the following options may be considered.

2.4.1 Purchase Orders

A Purchase Order ("PO") is a document that comprises an Agency's financial transaction with a vendor. The PO may reference an existing centralized or Agency contract, including but not limited to a Purchase Authorization. In the case where there is already an underlying contract, the PO may specify quantity, delivery instructions, and other basic information, but a PO usually does not include terms and conditions that conflict with the contract. Where there is not a centralized or Agency contract, such as a discretionary purchase, the PO shall also contain terms and conditions that govern the relationship with the vendor, and/or describe the goods or services being procured. If a PO governs a relationship with a vendor, it will contain all the information necessary to communicate the requirements of the procurement including MWBE and SDVOB goals if applicable. In addition to the financial and budgetary details for the purchase, Appendix A must be incorporated into or attached to the PO.

Additional information regarding POs can be found on the OSC website at:
https://www.osc.ny.gov/state-agencies/gfo/chapter-xia/xi-a3-purchase-orders

NOTE: Generally, use of a PO is not the appropriate tool when the agreement requires the parties to agree to terms and conditions beyond the State's standard terms and conditions. In such cases, the Agency should enter into a written agreement that is executed by both parties.

2.4.2 Purchase Authorizations

A purchase authorization (PA) is issued by a State Agency and is similar in both form and function to OGS centralized commodity contracts, in that once the PA is approved, Agencies can issue purchase orders against the PA without further approval of OSC. An example is when an Agency knows that a particular product, not available through a Preferred Source or an OGS centralized contract, will be needed over an extended period of time, but the exact quantity is not known at the time of establishing the PA.

The primary benefit of the PA is that it allows an Agency to establish terms and pricing of a product without needing to encumber funds at the time of submission of the PA to OSC. However, if the contract provides for a guaranteed minimum purchase, OSC requires a purchase order encumbering the guaranteed purchase amount prior to approval. Additional information, as well as a standard format for the PA and award letter, is available through the OSC Guide to Financial Operations, Chapter XI.5: Purchase Authorizations, at: https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi5-purchase-authorizations.

2.4.3 Intergovernmental Agreements

Between State Agencies: An Interagency Memorandum of Understanding ("MOU") is an agreement (not a contract) between two or more New York State Agencies that outlines matters of substance, such as budget and reporting responsibilities, but does not include

formal standard contract terms. Since MOUs are not formal contracts, they do not require the approval of the ***Control Agencies***.

Between an Agency and Another Government Entity: An agreement between a State Agency and another governmental entity that is not a State Agency is called an intergovernmental agreement and requires Control Agency approval when valued above the Agency's contract approval threshold pursuant to State Finance Law § 112.

For additional information on these documents, see Section XI.9 on Intergovernmental Agreements in the OSC's Guide to Financial Operations: https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi9-intergovernmental-agreements

Section III: Pre-Solicitation and Planning

3.1 Knowing the Business Needs

Know what the "end result" needs to be. Before starting the procurement process, have a good understanding of what the Agency needs, what a product will be used for, whether there will be a need for modifications to existing equipment or facilities, and what is available in the marketplace. Identification of the business needs may require meeting with end-users to bring added clarity to the scope of the transaction and the various components of the transaction, such as the intended product usage, what services are needed, or site conditions.

3.2 Proper Planning

Proper planning is the single most important factor in conducting a successful procurement. Treat the process as a project and develop a timeline of events to meet the Agency's programmatic needs and effectively budget staff time. Proper planning includes, but is not limited to:

- Estimating costs
- Determining the award methodology
- Allowing adequate time for advertisement
- Writing a clear and concise solicitation
- Coordinating with other business units or Agencies
- Allowing sufficient time for potential bidders to ask questions
- Allowing sufficient time for the Agency to prepare responses
- Allowing sufficient time for bidders to prepare bids/proposals (taking into account the complexity of the solicitation)
- Allowing sufficient time for reviewing the bids/proposals
- Conducting internal/external reviews of the final contract

As part of planning, follow all administrative requirements, including but not limited to following the instructions of the B-1184 bulletin, the Plan to Procure process, and developing a ***business case***.

3.3 Gathering and Exchanging Information Prior to Solicitation

Procurement staff have several methods available to them for gathering and exchanging information with potential bidders, prior to issuing a solicitation or making a purchase. These methods enable information gathering while promoting openness, fairness, and transparency. These methods include (but are not limited to):

- Soliciting feedback on a draft solicitation prior to release
- Holding roundtable discussion with vendors prior to release
- Conducting a Request for Information (RFI)
- Conducting a Request for Comment (RFC)
- Conducting a Solicitation of Interest (SOI)

As a best practice when gathering information, it is suggested that an Agency issue a notice in the New York State Contract Reporter to ensure that a level playing field among potential bidders is provided. Other means of identifying potential bidders, such as market-based research and newspaper/trade journal advertisements, may be used depending upon the nature of the Agency's need.

3.3.1 Roundtable Sessions

A roundtable session is generally an open meeting among all potential bidders and the Agency involved in the procurement before the release of a competitive solicitation. These meetings allow potential vendors and Agency staff to ask questions of each other and allow for an open exchange of information. It is suggested that these meetings be moderated to ensure that all attendees are provided an equal opportunity to participate. Techniques that can be used include: agendas detailing the topics to be discussed; prior submission of questions; and restricting time allowed for responses.

3.3.2 Request for Information

A request for information ("RFI") is a research and information gathering document used when an Agency seeks to learn about the options available for addressing a particular need or want to obtain information to help create viable requirements for a potential solicitation. For example, an Agency needs to buy decals to affix to the exterior of a vehicle but does not know how various materials (such as stock or ink) withstand long-term exposure to the elements. Issuing an RFI to potential bidders would elicit responses that would enable the Agency to write specifications to provide the Agency with the best solution.

Consider using an RFI to gather information about the types of goods/services that are available. Certain types of products evolve rapidly; therefore, sending an RFI to vendors may provide insight on newer, more efficient products or services that better address the needs of the Agency. It is also strongly recommended that an RFI be advertised in the New York State Contract Reporter to provide additional vendors with an opportunity to respond to the RFI. In addition, all attempts to gather information should include MWBEs, SDVOBs and SBEs. Use the Agency compliance office to help contact these vendors.

3.3.3 Request for Comment

A request for comment ("RFC") is used to solicit input from all potential bidders about a solicitation's structure and language to assess its impact on potential bidders. For example,

an Agency has drafted a request for proposals (solicitation) but is unsure if potential bidders will find the language too restrictive or the requirements unclear. The RFC allows the Agency to gather information, revise the solicitation as appropriate, and issue a document to which potential bidders would be more likely to respond. This practice differs from sending a draft solicitation, in that the Agency is only sending the sections of the solicitation that are open for discussion.

3.3.4 Conducting a Solicitation of Interest

Prior to issuing a formal solicitation, an agency may communicate orally or in writing with the vendor community to determine the capabilities and interests of the marketplace in participating in a potential formal solicitation. Similar to an RFI, an agency may outline the commodity, service or technology that they are considering procuring and seek feedback from one or more vendors on whether the vendors would be interested in or capable of providing that commodity, service, or technology to the agency.

3.4 Downstream Prohibition

If a vendor participates in the development of a solicitation (e.g. specifications, etc.) they are generally precluded from being able to participate as a potential bidder. See State Finance Law § 163(2); and for technology procurements, see State Finance Law § 163-a, for guidance and exceptions.

3.5 Discussion with the Office of the State Comptroller

Prior to issuing the solicitation, consideration should be given to discussing complicated and/or sensitive solicitations or unique evaluation methodologies with the OSC Bureau of Contracts to ensure that the procurement is undertaken in an appropriate manner.

3.6 After the Scope is Finalized

After the scope is finalized the order of priority described in section 2.3 of these Guidelines must be applied. If the Agency is using discretionary spend under section 2.3 and the estimated cost is under the Agency advertising thresholds in Economic Development Law Article 4-C, consideration should be given to a discretionary purchase including MWBEs, SDVOBs, and SBEs.

If the estimated cost is above the Agency advertising thresholds in Economic Development Law Article 4-C, but below the higher discretionary thresholds for MWBEs, SDVOBs, SBEs, and NYS Textiles, promoting local food growers, recycled or remanufactured, consideration should be given to limiting the opportunity to one or more targeted groups for the discretionary procurement. Discretionary purchases that are valued over the Agency's standard discretionary limit shall be subject to the review and approval of OAG and OSC. Practitioners should review specific procurement requirements for these types of discretionary methodologies.

For additional information, refer to the Discretionary Purchasing Guidelines found on the Procurement Council webpage at:
https://ogs.ny.gov/procurement/nys-procurement-council

If the Agency's market research supports a non-competitive award such as a single or Sole Source, an award may be made, with proper justification, to the single or Sole Source provider. If the dollar value exceeds Agency advertising thresholds, a Contract Reporter Exemption Request is required and should be submitted to OSC through the Electronic Documents Submission System ("EDSS"). Upon approval, an advertisement must be placed in the Contract Reporter to indicate the award to the single or sole source. There are limited exceptions within Economic Development Law that allow an Agency to proceed without posting within the Contract Reporter.

The Electronic Documents Submission System can be found on the OSC website at: https://www.osc.state.ny.us/state-agencies/contracts/electronic-documents-submission- system-edss?redirect=legacy

If the Agency's market research indicates another State Agency or governmental entity has already procured this commodity, service, or technology, there may be an option to piggyback off an existing contract.

Instructions on how to piggyback can be found on the OGS website at: https://ogs.ny.gov/procurement/piggybacking-using-other-existing-contracts-0

Section IV: Solicitation Development and Content

4.1 Scope of Work

A scope of work provides a thorough summary of what goods and/or services are being procured, including a timeline for performance, any milestones, reports, products, or other deliverables. While there is no "one way" to write a scope of work, these fundamental principles are similar in each solicitation.

4.2 Specifications

The solicitation should specify which aspects or features of the requested deliverables are critical to the Agency, and which are therefore expected to be included in the bid or proposal (e.g., GreenNY specifications).

4.3 Minimum Bidder Qualifications

An Agency shall establish minimally acceptable qualifications that a bidder must meet in order to be deemed ***responsive***. When an Agency establishes minimum qualifications, it must disclose in the solicitation both the qualification criteria and that bidders not meeting these criteria will be eliminated without further evaluation. Minimum qualification criteria are scored on a pass/fail basis.

4.4 Submissions and Evaluations

Prior to establishing a method of award and evaluation criteria, the Agency must determine whether the award will be based on lowest price or best value. For commodities, an award shall be made based on lowest price among responsible and responsive offers (State Finance Law § 163(3)(a)(ii)). In the case of services, the award must be based on "best value" (State Finance Law § 163(4)(d)). However, best value can be equated to lowest price.

4.5 Method of Award

4.5.1 Lowest Price Solicitation

The solicitation must identify all the minimum qualifications and/or requirements the vendor must meet. Among vendors who meet the minimum requirements, determination for an award will be made based on lowest price as calculated by the pricing pages.

Pricing pages must be structured in accordance with the selected pricing methodology. All bidders must provide the same pricing components and where possible, pricing should be collected from all bidders in the same format. This may include requiring all bidders to use the pricing sheets provided in the solicitation.

Agencies should request early payment discounts for payments made in less than 30 days after receipt of a proper invoice. A bidder must detail the discount by providing on the bid proposal form, the percentage of discount and the specific number of days within which the payment must be made for the discount to apply. If the bidder offers multiple discounts, it must provide the details for each discount offered (for example: 2%/15 days; 1%/20 days). A discount for early payment does not affect bid amounts nor is it considered in making awards, except that a discount may be considered in resolving tie bids.

4.5.2 Best Value Solicitation

State Finance Law § 163(4)(d) mandates that a contract for services (including technology) be awarded on the basis of best value which takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements where qualifications can be determined on a pass-fail basis, best value can be equated to low price. An RFP should be used for the procurement of services even where best value is equated to low price.

Executive Order 190: State entities shall, where practicable and feasible, include in solicitations for best value procurements where price is NOT the determining factor, a provision requiring contractors to describe how their proposals can improve community health and wellness in their execution of the contract; such as promoting age-friendly job creation and economic stability, transportation mobility, and the ability to leverage investments that can have complementary benefits in more than one area.

Evaluation Criteria: A best value solicitation must include the criteria that will be used for the evaluation of proposals. Per State Finance Law § 163(9)(b) "Best value" means the basis for awarding contracts for services to the offerer which optimizes quality, cost and

efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses, certified minority- or women-owned business enterprises as defined in the Executive Law § 310 subdivisions one, seven, fifteen and twenty, or service-disabled veteran-owned business enterprises as defined in Veterans' Services Law § 40, subdivision one, to be used in the evaluation of offers for awarding of contracts for services.

4.5.3 Participation by Minority Group Members and Women with Respect to State Contracts

All state contracts, except where noted below (with a value in excess of $25,000 for commodities, services and technology), should be reviewed to identify possible subcontracting or supplier opportunities to be performed/supplied by New York State Certified Minority and Women-Owned Business Enterprises (MWBE). If such opportunities exist, MWBE goals will be included in the solicitation document, and final contract.

For RFPs consideration must be given to awarding technical evaluation points to:

1. MWBE, Service-Disabled Veteran-Owned Business (SDVOB), or New York State Small Business (SBE) bidders (as defined in Executive Law § 310 Definitions), in accordance with the quantitative factor language in State Finance Law § 163(1) Definitions (j) Best Value; or
2. Bidders who include efforts to incorporate MWBEs in their business practices, in accordance with Executive Law § 313-a Diversity Practices of State Contractors, and NYCRR Title 5, Chapter XIV, § 142.3 Diversity practices, bidding and award considerations.

4.5.4 Tie Bids

There are several ways to resolve a tie bid scenario. In the event of a tie bid, the decision as to the winning bidder must be made in accordance with the State Finance Law § 163(10)(a) as follows. Selection and award shall be a written determination in the procurement record made by the commissioner or a state agency in a manner consistent with the provisions of the solicitation. In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the commissioner or agency head to award a contract to one or more of such bidders shall be final. The basis for determining the award shall be documented in the procurement record.

4.6 Pricing Submissions

Pricing pages must be structured in accordance with the selected pricing methodology. All bidders must provide the same pricing components and where possible, pricing should be collected from all bidders in the same format as outlined in the solicitation. If that is not possible it must be specified in the solicitation. For example, an RFP may ask for a narrative for the pricing proposals, or allow different methods, if it's known that there is more than one pricing methodology used in the industry. However, bids should be evaluated based on final NYS price if there was more than one known pricing methodology. Award based on different pricing methodologies (e.g., discount from list, or cost-plus), should be allowed only for a

multiple award contract where bidders are only required to meet minimum qualifications to be awarded a contract.

4.7 Estimates

The solicitation must describe how pricing will be evaluated. If there is a known or fixed quantity, provide those details in the solicitation. For estimated quantities, include language in the solicitation notifying bidders that the quantity referenced is not guaranteed and the Agency will only be responsible for actual quantities ordered.

4.8 Firm Offer

Every offer is firm and not revocable for a period of 60 days from the bid opening unless a longer period of time is specified in the solicitation (State Finance Law § 163(9)(e)). Agencies should consider the estimated evaluation and vendor selection timeline when determining the length of time that an offer must be held.

4.9 Required Document Submissions

When receiving document submissions, it is important to identify any security or building access procedures that may affect the delivery of a submittal, as well as any cyber security terms that will govern. Depending on the nature of the procurement, an Agency will want to require certain documents to be submitted as part of the bid, such as the following:

- Liability, Workers' Compensation, and Disability Insurance
- MWBE Utilization Plan
- SDVOB Utilization Plan
- EEO
- Vendor Responsibility
- State Tax Law § 5-a, Sales Tax Law Certification (ST-220)
- State Finance Law §§ 139- j & 139-k, Procurement Lobbying Law
- Nondiscrimination in Employment in Northern Ireland, Macbride Fair Employment Principles
- Non-Collusive Bidding
- Diesel Emission Reduction Act
- Executive Order No.177, Non-Discrimination Requirements
- State Finance Law § 139-l, Sexual Harassment Policy Requirements
- State Finance Law § 139-m, Gender-Based Violence and the Workplace Requirements
- Performance and Bid Bonds
- Executive Order 16 (Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia)
- Federal Funding Agency Mandatory Terms and Conditions
- Vendor/Manufacturer Certificate
- Reseller/Subcontractor Agreement(s)
- Agency Specific Certifications

References: If the Agency requires a bidder to submit references as part of the response, the Agency should, at a minimum, verify the references provided as part of its evaluation

process. If the Agency opts to score reference checks, the scoring methodology must be disclosed in the solicitation.

4.10 Order of Precedence/Conflict of Terms

In procurement, the order of precedence is a term that establishes a hierarchy among contractual documents. This "pecking order" of prioritization is defined to resolve conflicts that could occur in the various terms contained in those documents.

Appendix A must be first in the order of precedence. Below is a sample:

1. Appendix A – Standard Clauses for NYS Contracts
2. Amendment(s) to the Contract/Award Document
3. Contract/Award Document
4. Clarifications and Addenda/Amendments to the solicitation
5. Solicitation, Appendices, Attachments, and Exhibits
6. Clarifications to the Bidder's Proposal
7. Bidder's Proposal

In the event of a conflict in any provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

4.11 Timeline and Calendar of Events

This section should provide a specific timetable for the procurement process. Important milestones to be specified typically include:

1. **Solicitation Release Date**: The schedule should include the solicitation release date.
2. **Date for Pre-Bid Conference/Site Visit**: Attendance must be defined as optional or mandatory and vendor attendance must be recorded on a sign-in sheet. If attendance is mandatory, vendor attendance must be recorded on a sign-in sheet and the Agency should distribute any amendments to the solicitation and other communications only to vendors attending the mandatory conference/site visit and bids may only be considered from bidders who participated.
3. **Dates for Question Submission and Agency Response**: The solicitation should provide the time frames for the submission of questions and responses to those questions. The method for submitting questions should be stated. Bidder should be notified that any requested deviations must be submitted during the question and answer ("Q&A") period. Deviations are proposed changes to the scope, terms,

and conditions, or other requirements of a solicitation. Consider providing bidders with a form or standard format to submit their questions. The Q&A process may be multiphase, allowing for questions and answers prior to, during, and/or after the pre-bid conference/site visit. If no pre-bid conference/site visit will be held, the Agency should still provide for a Q&A period. Answers provided must be vendor-neutral and provided in writing to all potential bidders.

4. **Notice of Intent to Bid (optional or mandatory)**: The solicitation may require a bidder to provide, by a specified date, a notice of their intent to submit a bid. This notice may be optional or mandatory, at the Agency's discretion, although Agencies are encouraged to provide maximum flexibility for the receipt of bids from all interested bidders. If the notice of intent to bid is made mandatory, the Agency should distribute any amendments to the solicitation and other communications only to vendors submitting the intent to bid, and bids may only be considered from bidders who submitted the intent to bid.

5. **Date for Submission of Bids**: The bid due date is the latest date and time which an interested vendor may submit a bid or proposal. Agencies should include clear language about not-accepting late submissions or allowing bids to be modified after the submission due date. Vendors may withdraw their bid submission prior to the submission due date. The earliest possible due date for submission of bids is 15 business days after the advertisement appears in the New York State Contract Reporter.

4.12 Mandatory Clauses

Appendix A – Standard Clauses for New York State Contracts contains standard clauses that must be included in every State contract.

Appendix A can be found on the OGS website at:
https://ogs.ny.gov/procurement/conducting-your-own-procurement

Check with your Agency counsel or contracts management office to ensure all applicable mandatory clauses are included. In addition, depending on the nature and dollar value of the procurement, the following may apply:

1. Procurement Lobbying Law (State Finance Law §§ 139-j & 139-k)
2. Sales tax certification (ST-220) (New York State Tax Law § 5-a) (NYS GFO XI.18.D: https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi18d-sales-and-compensating-use-tax-documentation)

3. Vendor responsiveness and responsibility (mandatory) (NYS Comptroller GFO XI.16: https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi16-vendor-responsibility)
4. Consultant disclosure (State Finance Law § 163) (NYS Comptroller GFO - XI.18.C: https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi18c-consultant-disclosure)
5. Reference and compliance with Executive Law Article 15-A (MWBE & EEO)
6. Reference and compliance with Veterans' Services Law Article 3 (SDVOB);
7. Workers' Compensation and Disability Benefits Insurance (Workers Compensation Law § 57 & § 220)
8. Bidders' right to a ***debriefing*** (State Finance Law § 163(9)(c))
9. Freedom of Information Law (FOIL; Public Officers Law Article 6)
10. Bid protest procedures (NYS Comptroller GFO XI.17: https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi17-protest-procedures)
11. Sexual Harassment Prevention Certification (State Finance Law § 139-l) (NYS Comptroller GFO XI.18.I: https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi18i-sexual-harassment-prevention-certification)
12. Gender-Based Violence and the Workplace Policy and Certification. Every bid must contain the statement found under § 139-m(1)(a). (State Finance Law § 139-m) (NYS Comptroller GFO XI.18.J: https://www.osc.ny.gov/state-agencies/chapter-xi/xi18j-gender-based-violence-and-workplace)
13. Agency-specific terms and conditions

NOTE: The above list is not exhaustive. Some specific contracts may require additional mandatory clauses based on the nature of the procurement, (i.e., federal mandatory contracts, statements regarding Net Neutrality required of Internet service providers).

4.13 Workers' Compensation and Disability Insurance

In the context of State procurements, the solicitation must make it clear that the bidder/vendor will be required to provide proof of Workers' Compensation and Disability Insurance (or proof of exemption from such requirements) prior to being awarded a contract or receiving a contract renewal. Failure to do so will result in the bid being rejected or, in the case of contract renewals, the contract being allowed to expire.

More information regarding Workers' Compensation and Disability Insurance can be found on the Workers' Compensation Board website at: http://www.wcb.ny.gov/

4.14 Additional Insurance Requirements

Solicitations and contracts should require bidders/vendors to obtain insurance in accordance with the scope of the solicitation/contract. In an effort to standardize insurance requirements among State entities, the New York State Procurement Council and the New York State Council of Contracting Agencies adopted guidelines for insurance requirements which provide model insurance specifications and suggestions on how to monitor compliance with those requirements.

The guidelines for insurance requirements can be found on the OGS website at: https://ogs.ny.gov/procurement/nys-procurement-council

4.15 State Reserved Rights

In addition to mandatory clauses, there are a number of State reserved rights that are typically included to provide additional protections to the Agency conducting the procurement. These should be clearly stated in the solicitation. The following is the most common set. Depending on the nature of the procurement, there may be additional State reserved rights beyond those presented here:

New York State reserves the right to:

1. Reject any or all proposals received in response to the solicitation.
2. Withdraw the solicitation at any time, at the Agency's sole discretion.
3. Make an award under the solicitation in whole or in part.*
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the solicitation.
5. Seek clarifications and revisions of proposals.*
6. Use proposal information obtained through site visits, management interviews, and the State's investigation of a bidder's qualifications, experience, ability, or financial standing, and any material or information submitted by the bidder in response to the Agency's request for clarifying information in the course of evaluation and/or selection under the solicitation.
7. Prior to the ***bid opening***, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available.
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent solicitation amendments.
9. Change any of the scheduled dates.

10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders.
11. Waive any requirements that are not material.
12. Accept and consider for contract award bids with non-material bid deviations or non-material bid defects such as errors, technicalities, irregularities, or omissions.
13. Negotiate with the successful bidder within the scope of the solicitation in the best interests of the State.
14. In the event of unsuccessful negotiations with the selected bidder, conduct contract negotiations with and/or award the contract to the next responsive and responsible bidder.
15. Utilize any and all ideas submitted in the proposals received.
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors, assuring a full and complete understanding of a vendor's proposal and/or to determine a vendor's compliance with the requirements of the solicitation.*

***NOTE:** As detailed in State Finance Law § 163(9)(c), failure to include these specific reserved rights (marked with an asterisk) in the solicitation precludes their use in that procurement.

Section V: Solicitation Process

5.1 Advertising Procurement Opportunities

An Agency is required to advertise a procurement opportunity in the New York State Contract Reporter ("NYSCR") when the procurement exceeds the Agency's advertising threshold. If the Agency seeks a waiver from this requirement, OSC must provide prior approval of a Contract Reporter Exemption Request. Agencies are encouraged to advertise procurements below their advertising threshold to maximize competition and best pricing. (Agencies are encouraged to advertise for discretionary procurements as well to maximize competition and best pricing)

For useful information regarding procurement advertising, visit the following websites:

The NYS Contract Reporter - https://www.nyscr.ny.gov/

Bulletin on Advertising Thresholds and Notice Requirements - https://ogs.ny.gov/procurement/contract-reporter-advertising-thresholds-and-notice-requirements-0

A primary intent of advertising is to promote transparency and competition in the procurement process. Advertisements should provide prospective bidders with an overview of the proposed procurement, including all requirements of Section 142 of the Economic

Development Law. Some of the requirements are a brief description of the commodities or services sought, the contract period, the proposal due date, a description of any eligibility or qualification requirement or preference, a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement, identification of designated contacts, MWBE, SDVOB, and SBE goals, and any other information deemed useful to potential vendors.

As a best practice, an Agency should advertise its procurement opportunities in other sources such as trade publications, journals, newspapers, and Agency websites.

In addition to publishing in the NYSCR, the solicitation should be distributed to all known potential bidders ("bidders list") and any bidder that requests a copy as a result of the advertisements. Potential bidders can be identified through web searches, previous procurements, ***bidder lists*** maintained by the Agency, the directory of New York State-Certified MWBEs, and/or SDVOBs. The solicitation can be distributed via mail, e-mail, posting to an Agency website, and other means.

Additional information on advertising can be found on the following websites:

Bulletin on Advertising Thresholds and Notice Requirements - https://ogs.ny.gov/procurement/contract-reporter-advertising-thresholds-and-notice-requirements-0

Section XI.14.A: Publication of Procurement Opportunities in the OSC Guide to Financial Operations – https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi14a-publication-procurement-opportunities

5.2 Restricted Period/Designated Contacts

Generally, the first publication of the solicitation in the NYSCR or any other publication commences the Procurement Lobbying Law restricted period. During the restricted period, all communications related to the solicitation must be addressed only to the Agency's Designated Contacts. To help vendors keep track of all solicitations in a restricted period, consider posting a list on the Agency's website. Refer all potential violations of the Procurement Lobbying Law to your Agency's Ethics Officer.

5.3 Conduct Site Visits and Pre-Bid Conferences

Site visits are scheduled when a personal examination of the specifications and location of the proposed work may be required for the bidder to view the character, quality, and extent of the work to be performed and the conditions under which the work will be executed. The visit is mandatory if it is determined that it is not possible to determine the extent of the work without a site visit (e.g., when pictures or written descriptions are not adequate).

Pre-bid conferences can be conducted via a conference call, video conference, in person, or as any combination of those options. The Agency must document who attended, the questions raised, the location, the time, and other salient information.

The solicitation must identify the date, time, and location of such events, if planned, and whether attendance is mandatory or optional to bid. All attendees should be advised that any information or answers provided are not binding on the Agency. Only answers provided in the published Q&A will be binding.

5.4 Solicitation Instructions

Solicitation instructions should be clear and inform the potential bidder of how to prepare and submit a submission, the contract period/term and any extensions or renewals, the price structure, (hourly, per item, per carton, square foot, etc.), the Agency's ***bid protest*** / dispute resolution policy (if applicable), performance requirements, contract monitoring, termination rights, and any optional requirements. Agencies should include a sample contract boilerplate document, if applicable. This may be applicable (but, is not limited to) the following situations:

- In a contract where all vendors who meet minimum qualifications receive an award
- In an award that is not open to any contract language negotiations

Additional information on bid protests can be found at the following link (NYS Comptroller GFO XI.17): https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi17-protest-procedures

Section VI: Evaluation and Award

The objective of the evaluation process is to apply the criteria set forth in the solicitation to ensure that bids are evaluated objectively, fairly, equally, and uniformly, and result in the best value to the State.

6.1 Administrative Review to Verify Responsiveness

The Agency must ensure that the bid submission is complete and accurate. This includes, but is not limited to:

1. Ensuring that all required documents and forms, including MWBE and SDVOB utilization plans are included in the submission and signed if required.
2. Reviewing price submission for completeness and accuracy of calculations.
3. Determining on a pass/fail basis that all minimum mandatory qualifications to submit a bid (e.g., minimum experience requirements) set forth in the solicitation have been met.

NOTE: For low bid solicitations, administrative review should begin with the apparent low bid after verifying all calculations for all bidders. If the apparent low bidder is not found to be responsive, the bid must be rejected, and the next lowest price bid must be reviewed. In addition, notice must be provided to an apparent low bidder who is being rejected as non-responsive. For best value solicitations, any bids failing to meet administrative requirements should not be advanced for evaluation of technical and cost. Consider evaluating cost proposals last.

6.2 Evaluation

There are two primary methods of evaluation used for procurement in the State. The two methods of evaluation are low bid evaluation and best value evaluation.

6.2.1 Low Bid Evaluation

After administrative review, the apparent low bidder should be evaluated for any other pass-fail criteria in the solicitation. If the bidder meets all pass-fail criteria, move on to the ***tentative award*** phase. If a bidder fails to meet any criteria, the Agency would repeat the evaluation process with the next low bidder until a responsive vendor is identified and an award is made

Confirm the bidder understood the specifications and can perform/deliver at the bid price, particularly if there are large variances in the bid prices between the apparent low bid and the next low bid. If applicable, confirm all prices are in accordance with statutory requirements.

NOTE: In the event of a tie bid, the decision as to the winning bid must be made in accordance with the State Finance Law § 163(10)(a) and any policy or process stated in the solicitation.

6.2.2 Best Value Evaluation

Best value evaluations include an analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and cost proposal evaluations to arrive at the selection of the proposal deemed to be the best value solution for the State in accordance with the requirements set forth in the solicitation.

Technical evaluation – An examination of the non-cost elements that were not considered during the administrative review, such as the functional specifications (e.g., proposed staffing and project plan, scheduling, solution model, ***diversity practices***, or ***quantitative factors***). The technical evaluation measures the extent by which a proposal will meet the Agency's needs and relies upon the evaluators' expertise in assessing the strengths and weaknesses of each

response. The technical evaluation is a critical part of the ultimate goal of determining which proposal presents the best value to the State. The main steps for performing the technical evaluation are discussed below.

Development of the Technical Evaluation Criteria – The criteria selected for evaluation must reflect the Agency's objectives, scope of services, and requirements as set forth in the RFP. Examples of typical technical evaluation criteria include, but are not limited to:

- Work plan and methodology to achieve desired end results
- Degree to which the proposal satisfies mandatory, optional, desirable and/or alternative green performance standards
- Experience of the vendor in providing the required service and/or technology
- Management capability of the vendor
- Vendor's overall past performance
- Qualifications and experience of the vendor's proposal staff
- Conformance with the schedule of work set forth in the RFP
- Vendor references

NOTE: Agencies are reminded that the criteria and sub-criteria may, but are not required, to be disclosed in the RFP.

Cost evaluation – Evaluation of the prices proposed. Methods for calculating costs vary depending on a mix of factors concerning the nature and extent of the services, the costs associated with utilizing the services, and the impact of the services on Agency programs and operations (State Finance Law §§160(5) and (6)).

The two most common methods for comparing the cost proposals are:

Conversion of Price to a Weighted Point Score

Points = (Lowest bid divided by the bid being evaluated) x cost points

Comparison of Life Cycle Costs

Procurements that entail the expenditure of funds for both the fees associated with the services to be procured (i.e., price) and costs associated with the introduction of the services into the environment (i.e., indirect costs) could be evaluated by analyzing total life cycle costs, defined as the sum of the fees and indirect costs.

An example of life cycle costs for a computer system conversion would be the offer price of the new system combined with other expenses, such as, but not limited to, upgrades to existing infrastructure, additional staff requirements, if necessary, and the cost of end-of-life management. Once the total life cycle costs for competing proposals have been determined, the life cycle costs associated with each proposal must be converted to a weighted point score using the formula above.

NOTE: If an Agency wishes to use a cost evaluation method other than those described above, such as "banding" or "competitive cost range," it should contact OSC for further discussion before proceeding.

6.2.3 Evaluation Instruments

Prior to the proposal due date, agencies must create and finalize the instruments that will be used to evaluate a vendor's technical and financial proposals. The technical evaluation instrument must correspond to the weighting and sections as indicated in the solicitation. The financial evaluation instrument must allow for fair and equal scoring amongst all bidders.

6.3 Reference Checks

If performing reference checks, checks must be performed for all bidders in the same manner. It is recommended to follow a standard questionnaire for consistency.

6.4 MWBE/SDVOB Compliance Review

Confirm and verify the utilization plan meets the goals set forth in the solicitation. If applicable to the procurement, award points for either quantitative factors in accordance with State Finance Law § 163(1)(j) or diversity practices (MWBE only) in accordance with Executive Law § 313-a.

6.5 Disqualification Determination

If any bidder is deemed non-responsive because of, but not limited to, a failure to meet minimum requirements, the Agency is required to notify the bidder of the disqualification in writing and provide an opportunity for a debriefing. The notification should include the reason for disqualification and be sent as soon as the disqualification determination is made. Bidders may protest a disqualification.

6.6 Determination of Vendor Responsibility

Prior to making an award, State Finance Law § 163(9)(f) requires that a State Agency make a determination that the apparent winning bidder is Responsible. State Agencies must also check the NYS Debarred List to confirm the apparent winning bidder is not listed. If awarded, the contract must expressly obligate the vendor to maintain its responsibility throughout the term of the agreement.

The NYS Debarred List can be found on the OGS website at:
https://ogs.ny.gov/debarred-and-non-responsible-entities

Additionally, submission of a Vendor Responsibility Questionnaire and a State contracting entity vendor responsibility review are required for a subcontractor where:

- The subcontractor is known at the time of the contract award; and

- The subcontract will equal or exceed $100,000 over the life of the contract.

The responsibility determination is based upon many factors, including, but not limited to:

1. Financial and organizational capacity
2. Legal authority to do business in this State
3. The integrity of the owners/officers/principals/members and contract managers
4. Past performance of the bidder on prior government contracts.

NOTE: A review of these four elements is commonly known as the “FLIP” review.

Whether a bidder is "responsible" is a question of fact to be determined on a case-by-case basis after a comprehensive weighing of all factors. An unfavorable rating in one or more areas of evaluation does not need to result in a non-responsibility determination; however, it does require the Agency to make a determination that it has reasonable assurance that the proposed vendor is indeed responsible or non-responsible, as applicable.

Before finding a bidder non-responsible, a State Agency must ensure that the bidder was afforded due process rights and provided with the opportunity to explain its position in writing and, in some instances, in person, at a responsibility meeting. If responsibility issues cannot be resolved or explained to the satisfaction of the Agency, the Agency may issue a finding of non-responsibility to the bidder. This finding must be provided in writing to the bidder. Notification of the non-responsibility determination must be submitted to OGS. In accordance with EO 192, if a State Agency or authority debars a bidder or makes a determination that a bidder is not responsible, the Agency or authority must report that determination to OGS within five days using the Submission of Debarment/Non-Responsible Entities spreadsheet.

The Submission of Debarment/Non-Responsibility Entities spreadsheet can be found on the OGS website at: EO192SubmissionofDebarredNonResponsibleEntities.xlsx

More information on how to conduct a responsibility review can be found on the OGS website at: https://ogs.ny.gov/debarred-and-non-responsible-entities

6.7 Recommendation and Tentative Award/Non-Award Letters

Once the Agency has reviewed and verified the lowest or best value responsive and responsible bidder, the awards shall be made in accordance with the method of award in the solicitation. The Agency must retain the supporting documentation as part of the procurement record.

The Agency may award a contract to a bidder if only one bid was submitted, provided that the Agency documents that the solicitation did not restrict competition and that the cost is reasonable. The bid should still be evaluated to determine if it is responsive to the

solicitation and scored to determine how it proposes to meet the Agency's requirements before deciding to proceed with the award. Agencies should solicit feedback from the bidders' list for not submitting a bid if less than three bids are received.

Upon completion of the evaluation and bidder selection, the Agency must send notification of award and non-award to all successful and non-successful bidders. Notification to the selected bidders (tentative award) should indicate that the award is subject to conditions (if applicable), including, but not limited to, approval by Control Agencies, submission of proof of insurance, or other required documents, before the contract is finalized. The Agency must provide non-successful bidders the opportunity for a debriefing regarding the reasons that the bid submitted by the unsuccessful bidder was not selected for an award. Debriefings must be conducted in accordance with the NYS Procurement Council Bulletin Debriefing Guidelines.

The NYS Procurement Council Bulletin Debriefing Guidelines can be found on the NYS Procurement Council webpage at:
https://ogs.ny.gov/procurement/nys-procurement-council

6.8 Negotiations

Notes should be kept of all negotiation discussions and all revisions should be tracked in writing to ensure that the contract being signed contains all agreed upon terms and conditions. Revisions must not materially alter the requirements or specifications set out in the solicitation. To assess whether a potential revision constitutes a material change, the question should be asked: "Would other bidders or non-bidders have responded differently if the term or condition to be revised as a result of negotiation had been included in the solicitation?" If the answer is "yes" or "possibly," then the provision may not be revised.

6.9 Review of Terms and Conditions and Deviations Proposed by Bidder

Carefully read all terms and conditions that are proposed by the vendor to ensure that nothing conflicts with Appendix A or the solicitation. Material deviations to the terms and conditions must be rejected. In addition, any terms proposed by the bidder such as limits of liability, indemnification, and warranties, or those that may be detrimental to the State, should be discussed with Agency counsel.

6.10 Drafting Contract for Execution

Regardless of the format of the contract (formal contract, letter agreement, or other documents), ensure all terms and conditions from the solicitation, all negotiated terms, agreed upon pricing, accepted portions of the winning bid, an order of precedence, and any other required documents are contained within or incorporated by reference within the contract.

The finalized contract must be signed by a person legally authorized to bind the winning bidder and the signature must be notarized. Executive Law § 135-c provides for

electronic notarization; provides that a notary public is authorized to perform a remote notarization by utilizing communication technology that allows the notary public to interact with a principal; provides that a notary public is authorized to perform an electronic notarial act by utilizing audio-video communication technology that allows the notary public to interact with a principal. The Agency must sign the document and if required, it is then forwarded to OAG and OSC for approval. The contract must be submitted to OAG and/or OSC if it meets the threshold requirement for Control Agency approvals. Electronic signatures must be consistent with the Electronic Signatures and Records Act (ESRA) and New York State policy.

The NYS policy regarding electronic signatures can be found on the NYS Office of Information Technology Services website at:
https://its.ny.gov/electronic-signatures-and-records-act-esra

6.11 Create the Procurement Record

Every procurement, regardless of commodity, service, or technology must have a corresponding procurement record. Documentation of all phases of the procurement, decisions made, and communications with bidders or Agency program staff, should be included in the procurement record.

The NYS Procurement Bulletin on the Procurement Record and Checklist can be found on the NYS Procurement Council Webpage:

https://ogs.ny.gov/procurement/nys-procurement-council

6.12 Obtain Approvals

As provided for in State Finance Law § 112, contracts over or reasonably expected to exceed certain thresholds must be approved by OSC. If the value of the procurement is below the Agency's State Finance Law § 112 contract approval threshold, the Agency may proceed to issue the purchase order or contract without needing Control Agency approvals. However, when the contract's value exceeds the State Finance Law § 112 contract approval threshold, the Agency must prepare an award package that is subject to review and approval first by the OAG and second by the OSC. Depending on the nature of the procurement, approval from other Control Agencies may be required. For Staffing Contracts in which an individual or sole proprietor is hired to provide professional knowledge skills or expertise ("S Contracts") an agency must obtain Civil Service approval.

Generally, when OAG approval is required, only the contract itself needs to be submitted for review; however, the OAG may require the entire procurement record. OSC requires submission of the entire procurement record. As part of the OSC contract approval process, Agencies must identify the intended encumbrance amount (purchase order amount) on the Single Transaction Summary (STS) / AC 340-S Form. Agencies are not required to submit paper copies of contract-related purchase orders to OSC. Documents should be submitted to the OSC through the Electronic Documents Submission System ("EDSS").

The Electronic Documents Submission System can be found on the OGS website at:
https://www.osc.state.ny.us/state-agencies/contracts/electronic-documents-submission- system-edss?redirect=legacy

Agencies are encouraged to review additional information regarding approvals and encumbering contracts in SFS, which can be found on the following websites:

Section XI: Procurement and Contract Management in the OSC Guide to Financial Operations - https://www.osc.ny.gov/state-agencies/gfo/chapter-xi

OSC Contract Advisories – https://www.osc.state.ny.us/state- agencies/advisories/contract-advisory?redirect=legacy

The OSC Bureau of Contracts conducts the final review and provides its determination. OSC's review includes but is not limited to ensuring that:

1. The procurement was conducted in accordance with the process established by the Agency.
2. The procurement and resulting contract comply with all relevant laws.
3. The contract terms and conditions are in the best interests of the State. (State Finance Law § 112 and State Finance Law § 163(9)(g).

The OSC's Documentation Order Guide for Procurement Contracts and Contract Amendments transmitted via the EDSS can be found on the OSC website at: https://www.osc.state.ny.us/files/state-agencies/contracts/pdf/edss-document-order- guide.pdf

6.13 Contract Kickoff Meeting and Begin Performance

Services may not be performed, or goods delivered until the contract is fully approved by all necessary parties, including Control Agencies, if applicable. A copy of the fully executed contract must be delivered to the Vendor. Depending on the nature of the contract, a kickoff meeting may be necessary to introduce contract managers and vendor representatives and to discuss the scheduling of the work and service delivery expectations.

Section VII: Post Award & Contract Management

7.1 Contract Administration and Monitoring

The approved contract must be administered and monitored properly for the duration of the contract. Regular, diligent oversight of all activities and actions regarding the contract is an important part of the overall life cycle of a contract. The Agency should assign staff who will be responsible for ensuring that the vendor performs the requirements of the contract in accordance with the contract's terms, conditions, and specifications. Proper oversight and administration of the contract may entail educating and communicating with Agency personnel who will be direct users of the goods, services, or technology acquired and who are in the best position to monitor the vendor's performance of a contract. Regular

performance monitoring is critical to ensure that required performance specifications and standards are met and maintained.

The procurement record (from solicitation through contract end date or final payment, whichever occurs later) must be maintained for a minimum of six years plus the balance of the calendar year, following the conclusion of the contract. Contract records must follow Agency's record retention policy, which may require a longer retention period.

7.2 Effective Contract Management

Vendor Responsibility: Consult with Agency counsel upon identification of vendor responsibility issues before any action is taken.

Insurance Documents: Contract managers are responsible for maintaining current insurance documents as prescribed in the contract throughout the life of the contract, i.e., Workers' Compensation, Disability, General Commercial Liability, etc.

Monitoring of Vendor Performance: Contract managers are responsible to verify contract pricing periodically to ensure Agencies are being billed accordingly. Proper monitoring may include the sampling of the commodity or performance of the services. Monitoring activities and sampling sizes may vary depending on the contract requirements.

Reporting: Contract managers are responsible for obtaining and verifying all required reports outlined on the contract throughout the life of the contract. Sales reports should be obtained and reviewed regularly. MWBE and SDVOB compliance reports and updated utilization plans must be submitted in accordance with contract requirements, which may include submission to the contract manager or Agency compliance staff who will review MWBE and SDVOB submissions to make sure compliance is on track. Contract managers should also be tracking compliance with contract MWBE/SDVOB goals and making sure the vendor is on track to meet the goals.

NOTE: At the end of a contract, in which an Agency has determined a vendor has willfully and intentionally failed to comply with the MWBE participation goals, ***liquidated damages*** must be assessed.

Price Lists, PPI, CPI, Escalators/De-escalators, Wage Increases: If the contract allows for price adjustments, contract managers are responsible for determining approval of revised pricing as outlined in the requirements of the contract.

Billing/Payment Issues (i.e., improper invoices, discounts, interest, etc.): Contract managers should be aware of any billing issues identified and coordinate with the vendor to resolve the issue. In addition, contract managers should ensure the vendor provides maximum discounts for volume purchases and early pay discounts. Contract managers are also responsible for the timely processing of invoices to avoid interest payments.

Pricing: Contract managers should consider requesting better pricing throughout the life of the contract. Contracts with fixed pricing may have opportunities to reduce prices. For large volume purchases or if the purchase exceeds estimated contract quantities, staff should request a lower price than is listed in the contract. If using an OGS centralized contract, contract managers should request a reduction in price at the time of purchase.

Changes: Throughout the contract term, contract managers may be required to address the following:

1. Extensions/Renewals: Contracts may include the option to extend the end date of the contract.
2. Assignments: The responsibilities of the contract have been transferred to another vendor, i.e., vendor name change, restructuring, or acquisition.
3. Amendments: There may be instances throughout the contract term that require modifications to the existing contract language. All amendments must also be assessed for MWBE goals.
4. Suspension/Termination (Cause/Convenience): Performance issues with the vendors could result in the suspension or termination of the contract.

Termination for Convenience: Contract managers can employ a form notice terminating an agreement early for convenience. This notice may be used to unilaterally terminate a contract in accordance with the terms of the agreement.

Additional information on contract administration, management, and monitoring can be found on the following websites:

The NYS Procurement Council's Receiving Agency Inspection Guidelines (Found on the NYS Procurement Council Webpage) - https://ogs.ny.gov/procurement/nys-procurement-council

Section XI.11.F: Contract Monitoring in the OSC Guide to Financial Operations – https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi11f-contract-monitoring

Section XI-A.9: Receiving in the OSC Guide to Financial Operations – https://www.osc.ny.gov/state-agencies/gfo/chapter-xia/xi-a9-receiving

Glossary

Agency (State Agency) – Includes all State departments, boards, commissions, offices, or institutions. This term excludes, however, for the purposes of Education Law § 355(5), the State University of New York, and excludes, for the purposes of Education Law § 6218(a), the City University of New York. Furthermore, the term does not include the Legislature or the Judiciary.

Agency-Specific Contract – A contract where the specifications for the product and/or service are described and defined by an Agency to meet its needs.

Appendix A – The document containing standard clauses required in all New York State contracts.

Authorized User – Entities who may purchase products or services from centralized contracts, including but not limited to State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. (State Finance Law § 163(1)(k))

Best Value – The basis for awarding all service and technology contracts to the bidder that optimizes quality, cost, and efficiency, among responsive and responsible bidders. Such basis shall be, wherever possible, objective and quantifiable analysis. (State Finance Law § 163(1)(j))

Bid – A bid, quotation, offer or response to a solicitation to provide commodities, services, or technology at a stated price for the stated contract term.

Bid Opening – The formal process in which sealed bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the solicitation.

Bid Protest (also known as a Bid Dispute) – A formal written complaint made against the methods employed or decisions made by a State Agency in the process leading to the award of a contract.

Bidder (also referred to as an offeror or proposer) – Any individual, business, vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a bid in response to a solicitation.

Bidder List – A list of names and addresses of bidders from whom bids, proposals, or quotations are solicited. This may also apply to a list of potential bidders that is maintained by an Agency.

Business Case – A justification for a proposed project, program, or undertaking on the basis of its expected commercial benefit. It evaluates the benefits, costs, and risks of alternative options and provides a rationale for the preferred solution.

Centralized Contract – Any contract let by the OGS New York State Procurement Services for use by an authorized user, including but not limited to State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations, for the purchase of

commodities or services. Centralized contracts are established or approved by the Commissioner of General Services as meeting the State's requirements.

Commodities – Material goods, supplies, products, construction items or other standard articles of commerce (other than technology) that are the subject of any purchase or exchange (State Finance Law § 160(3)).

Contact – Any oral, written or electronic communication with an Agency under circumstances where a reasonable person would infer that the communication was intended to influence the Agency's conduct or decision regarding the procurement. (State Finance Law § 139-j(1) and 139-k(1)(c)) [See Restricted Period]

Contract – A written legal agreement is used to govern transactions between parties whereby goods or services are being obtained. It establishes a legally binding relationship between buyers and vendors that protects all parties throughout the procurement process and formalizes the obligations of each party. For New York State contracts, this includes writings that contain an agreement between the head of a state Agency (e.g., a Commissioner) and a contractor that sets for the total legal obligation between the parties as determined by applicable rules of law.

Contractor – Any individual, business, vendor or other legal entity awarded a contract with a State Agency to furnish commodities, services, or technology for an agreed-upon price.

Contract Approval Threshold – Financial limits set in State Finance law, above which procurements may require OSC approval. Contracts valued under a contract approval threshold are not subject to approval by OSC.

Control Agency – An agency responsible for reviewing and approving contracts in accordance with State Finance Law. The primary NYS control agencies are the OAG, the OSC, and the Division of Budget. Depending on the nature of the procurement, approval from other control agencies may be required.

Costs – The total dollar expenditure of a procurement. Article 11 of the State Finance Law requires costs of the given commodities, services, or technology to be quantifiable.
Costs shall be quantifiable and may include, without limitation, the price of the given good or service being purchased; the administrative, training, storage, maintenance, or other overhead associated with a given good or service; the value of warranties, delivery schedules, financing costs and foregone opportunity costs associated with a given good or service; and the life span and associated life cycle costs of the given good or service being purchased. (State Finance Law § 160 (5))

Debriefing – The practice whereby, upon the request of a bidder, the State Agency advises such bidder of the reasons why its bid was not selected for an award. It is viewed as a learning process for the bidder to be better prepared to participate in future procurements.

Discretionary Purchase – Purchases below an established dollar level that are authorized by law to be made without a formal competitive process.

Diversity Practices – Diversity practices are the efforts of vendors to include New York State-certified Minority- and Women-owned Business Enterprises (MWBEs) in their business practices. This may include board of directors' inclusiveness, previous successful submission of

MWBE utilization plans, their participation in joint venture, mentor-protégé relationships or other activities that demonstrate a commitment to diversity within the organization, as well as past, present, or future actions and policies, and include activities of vendors on contracts other than with the State of New York. For complete definition, see 5 NYCRR § 140.1(o).

Emergency – An urgent and unexpected situation where health and public safety or the conservation of public resources are at risk. Such situations may create a need for an emergency contract (State Finance Law § 163(1)(b)). An Agency's failure to properly plan in advance, which results in a situation where normal practices cannot be followed, does not constitute an emergency.

Executive Order – A rule or order issued by the Governor which carries the force of law.

F.O.B. Destination – As defined in U.C.C. § 2-319**, "**free on board (F.O.B.) destination" means there will be no additional charge for delivery to the Agency's specified location, and that the title is conveyed from the vendor to the Agency at the destination of the shipment. The vendor owns the goods during transit and will file any damage claims.

F.O.B. Origin – As defined in U.C.C. § 2-319, "free on board (F.O.B.) origin" means that the receiving Agency pays the delivery charges, and the title is conveyed from the vendor to the Agency at the origin of the shipment. Because the Agency owns the goods during transit, it will file any damage claims. This may also be referred to as "F.O.B. Shipping Point."

Form, Function, and Utility – The minimum essential requirements that will meet the Agency's needs. These requirements are defined by the Agency and any applicable legal obligations of the Agency. Requirements may include timeframe, quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.

Filed Requirements – Estimated quantities of a commodity (typically fuels or road salt) that an authorized user plans to purchase through a contract. Filed requirements are provided during the development of the contract and are communicated to potential bidders to and help guarantee that procurement needs are fulfilled. Authorized users may be required to purchase a certain percentage of their filed requirements regardless of need. Once these requirements have been submitted, the authorized user is obligated to purchase the commodity from the bidder that is awarded a contract for the authorized user's delivery location.

Invitation for Bid (IFB) – A competitive solicitation generally used for the procurement when the award is based on lowest cost offered by a responsive and responsible bidder.

Liquidated Damages – A monetary amount agreed to in the contract to provide for reasonable compensation to the State for the vendor's failure to meet its contractual obligations.

Mini-Bid – An abbreviated bid process in which an authorized user develops a project definition outlining its specific requirements and solicits bids from existing prequalified vendors. When a mini-bid is required, the exact process is clearly outlined in the contract. The mini-bid award is made based on best value or lowest price.

Minority and Women Owned Business Enterprises (MWBE) – A business certified under Article 15-A of the Executive Law that is independently owned, operated and authorized to do

business in New York State; and is owned and controlled by at least fifty-one percent women or minority group members who are citizens of the U.S. or permanent resident aliens. Such ownership must be real, substantial and continuing; and the minorities or women must have and exercise the authority to control independently the day-to-day business operations and decisions of the enterprise.

New York State Textiles – Animal or plant fiber products or textile products manufactured from animal or plant fiber grown or produced predominately in New York State

Office of General Services (OGS) – The Agency tasked with creating statewide centralized contracts for use by an authorized user, in accordance with State Finance Law § 163.

Office of the Attorney General (OAG) – The duties of this office are set forth in Executive Law § 63. With regard to procurement, the OAG reviews contract terms to ensure that the interests of New York State are protected. This office also reviews complaints of improper conduct and may conduct examinations into the performance of a contract. This Agency is also known as the Department of Law.

Office of the State Comptroller (OSC) – The Agency tasked with reviewing and approving contractual agreements, as per State Finance Law § 112, and granting exemptions from advertising requirements, in accordance with Economic Development Law § 144. This Agency is also known as the Department of Audit and Control.

Piggyback Contract – A newly created Agency contract based upon a contract awarded by the United States government, or any State or any political subdivision thereof, in accordance with the requirements of State Finance Law § 163(10) (e).

Preferred Source – In order to advance special social and economic goals, State Finance Law § 162 requires that a governmental entity purchase approved commodities and services from designated organizations when the commodities or services meet the "form, function, and utility" requirements of the governmental entity and the price meets the requirements set forth in the statute. Under State Finance Law § 163, purchases of commodities and services from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: Corcraft; New York State Preferred Source Program for New Yorkers Who are Blind (NYSPSP); and New York State Industries for the Disabled, Inc. These requirements apply to a State Agency, political subdivision and public benefit corporation (including most public authorities).

Prevailing Wage – The pay rate that is required to be paid to all private workers (non-government) on all New York State public works projects. Generally, prevailing wage rates apply to construction, repair or renovation of government facilities (State or local) or building service contracts. The New York State Department of Labor issues wage schedules on a county-by-county basis that contain minimum rates of pay for various job classifications (Labor Law Articles 8 and 9).

Price – Unless otherwise specified, the amount of money set as consideration for the sale of a commodity, service, or technology. When applicable and specified in the solicitation, it may include, but is not limited to, delivery charges, installation charges, and other costs (State Finance Law § 160(6)).

Procurement – The acquisition of commodities, services, or technology.

Procurement Record – Documentation of the decisions made, and the approach taken in the procurement process (State Finance Law § 163(1)(f)).

Project Sunlight – An online database where State entities must report certain meetings with vendors. Information on the specific types of meetings and other reporting requirements is available at http://projectsunlight.ny.gov.

Qualified Veterans' Entities – Commodities and services produced by a qualified veterans' entity providing job and employment-skills training to veterans where such a (workshop) entity is operated by the United States department of veterans affairs and is manufacturing products or performing services within this state and where such entity is approved for such purposes by the commissioner of education.

Quantitative Factor – Points are awarded as part of a technical evaluation to MWBEs, SDVOBs, SBEs, and NYS Textiles. (State Finance Law § 163(1)(j))

Recycled Commodity – A product that is manufactured from secondary materials as defined in the State Economic Development Law § 261(1) and State Finance Law § 165(3)(a). The law creates a preference for purchases of recycled commodities when they meet the form, function, and utility of the authorized user after the cost of the commodity has been considered. Environmental Conservation Law § 368.4(a) defines the specified minimum percentage by weight of post-consumer material. The unqualified use of the word "recycled" as an independent term represents that the package or product contains 100% recycled material content.

Remanufactured Commodity – A commodity that has been restored to its original performance standards and function and is thereby diverted from the solid waste stream, retaining, to the extent practicable, components that have been through at least one life cycle and replacing consumable or normal wear components. (State Finance Law § 165(3)(a)). The law creates a preference for purchases of remanufactured commodities when they meet the form, function, and utility of the authorized user after the cost of the commodity has been considered.

Request for Proposals (RFP) – A competitive solicitation seeking proposals for a specified service or technology, pursuant to which an award is made to the responsive and responsible proposing vendor offering the best value.

Responsible – The status afforded an individual or company based on factors such as: financial ability and organizational capacity; legal authority to conduct business in New York State; integrity as it relates to business related conduct; and past performance. (These four factors are sometimes summarized by the acronym "FLIP.") (State Finance Law § 163(1)(d))

Responsive – Meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a State Agency (State Finance Law § 163(d)).

Restricted Period – The period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the New York State

Contract Reporter in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from bidders intending to result in a procurement contract with an Agency and ending with the final contract award and approval by the Agency and, where applicable, OSC (State Finance Law §§ 139-j(1)(f) and 139-k(1)(f)). State Finance Law § 139-k requires a governmental entity to collect certain information pertaining to contacts received during the restricted period.

Revenue Contract – A contract or other instrument wherein the state or any of its officers, agencies, boards or commissions agrees to give a consideration other than the payment of money, when the value or reasonably estimated value of such consideration exceeds twenty five thousand dollars, shall not become a valid enforceable contract unless such contract or other instrument shall first be approved by the comptroller and filed in their office. Procurement staff should familiarize themselves with their Agency's policies and procedures pertaining to revenue contracts.

Service –The performance of a task or tasks that may include a material good or a quantity of goods, and which is the subject of a purchase or other exchange. Procurements of technology are conducted in the same manner as are procurements of services.

Service-Disabled Veteran-Owned Business (SDVOB) – A business certified under Article 3 of the Veterans' Services Law that is at least 51% owned by one or more service-disabled veterans; an enterprise in which such service-disabled veteran ownership is real, substantial and continuing; an enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; an enterprise authorized to do business in the State; and is independently owned and operated; an enterprise that is a small business which has a significant business presence in the State, not dominate in its field and employs less than 300 and is certified by the Office of General Services.

Single Source – A procurement in which, although two or more bidders can supply the required commodities or services, the Commissioner or State Agency, upon written findings setting forth the material and substantial reasons, therefore, may award the contract to one bidder over the other. The Commissioner or State Agency shall document in the procurement record the circumstances leading to the selection of the bidder, including the alternatives considered, the rationale for selecting the specific bidder, and the basis upon which it determined the cost was reasonable (State Finance Law § 163 (h)).

Small Business Enterprise (SBE) – A business that is resident in this State, independently owned and operated, not dominant in its field, and employs no more than one hundred people (State Finance Law § 160(8)).

Sole Source – A procurement in which only one bidder is capable of supplying the required commodities or services (State Finance Law § 163(1)(g)).

Solicitation – The document used to obtain competitive bids for specified commodities, services or technology, pursuant to which an award is made to the responsive and responsible bidders (or bidders in the case of a multiple award contract) offering the lowest price or best value.

Specifications (Requirements) – Description of the physical or functional characteristics or the nature of a commodity, the work to be performed, the service or products to be provided, the necessary qualifications of the bidder, the capacity and capability of the bidder to successfully carry out the proposed contract, the process for achieving specific results and/or anticipated outcomes, or any other requirement necessary to perform the work. Specifications may include a description of any obligatory testing, inspection, or preparation for delivery and use. They may also include federally required provisions and conditions where the eligibility for federal funds is conditioned upon the inclusion of such federally required provisions and conditions. Specifications should be designed to enhance competition, ensuring that the commodities or services of any bidder are not given preference, except where required by the State Finance Law (State Finance Law § 163(1)(e)).

State Procurement Council – The policy-making body established under State Finance Law § 161 that is responsible for the study, analysis and development of recommendations to improve State procurement policy and practices, and, for development and issuance of guidelines governing State Agency procurement.

Technology – Either a good or a service, or a combination thereof, used in the application of any computer or electronic information Equipment or interconnected System that is used in the acquisition, Storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of Data including, but not limited to, hardware, Software, firmware, programs, Systems, networks, infrastructure, media, and related material used to automatically and electronically collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, inter-face, switch, or disseminate Data of any kind or form. (State Finance Law § 160(10)). Procurements of technology are conducted in the same manner as are procurements of services.

Tentative Award – A determination by a governmental entity as to who an award of a procurement contract should be made. The award is “tentative” until the governmental entity determines that the awarded vendor has complied with the requirements of State Finance Law and other applicable laws, and the contract terms are fully worked out or agreed to through negotiation of the contract.

Vendor – A supplier or seller of commodities, services, or technology.

Executive Orders

Executive Order Number	Year	Governor	Title	Link
Executive Order No. 32	2023	Governor Kathy Hochul	Establishing State Agency Food Purchasing Goals for New York State Agricultural Products	https://www.governor.ny.gov/executive-order/no-32-establishing-state-agency-food-purchasing-goals-new-york-state-agricultural
Executive Order No. 22	2022	Governor Kathy Hochul	Leading by Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program	https://www.governor.ny.gov/executive-order/no-22-leading-example- directing-state-agencies-adopt-sustainability-and
Executive Order No. 16	2022	Governor Kathy Hochul	Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia	https://www.governor.ny.gov/executive-order/no-16-prohibiting-state- agencies-and-authorities-contracting-businesses-conducting
Executive Order No. 192	2019	Governor Andrew Cuomo	Continuing Vendor Integrity Requirements in State Contracts	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_192.pdf
Executive Order No. 190	2019	Governor Andrew Cuomo	Incorporating Health Across all Policies into State Agency Activities	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_190.pdf

Executive Order No. 187	2018	Governor Andrew Cuomo	Ensuring Diversity and Inclusion and Combating Harassment and Discrimination in the Workplace	https://www.governor.ny.gov/sites/default/files/atoms/files/EO%20187.pdf
Executive Order No. 183	2018	Governor Andrew Cuomo	Protecting the Personal Privacy of Public Sector Workers	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_183.pdf
Executive Order No. 177	2018	Governor Andrew Cuomo	Prohibiting State Contracts with Entities that Support Discrimination	https://www.governor.ny.gov/sites/default/files/atoms/files/EO177.pdf
Executive Order No. 175	2018	Governor Andrew Cuomo	Ensuring Net Neutrality Protections for New Yorkers	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_175.pdf
Executive Order No. 162	2018	Governor Andrew Cuomo	Ensuring Pay Equity by State Contractors	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_161.pdf
Executive Order No. 159	2016	Governor Andrew Cuomo	Establishing a Permanent Joint Task Force to Fight Worker Exploitation and Employee Misclassification	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_159.pdf
Executive Order No. 95	2013	Governor Andrew Cuomo	Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement	https://www.governor.ny.gov/sites/default/files/atoms/files/EO95_0.pdf