

STATE FINANCE LAW

May 15 & 16, 2013



Andrew M. Cuomo
Governor
State of New York

RoAnn M. Destito
Commissioner
Office of General Services

**State Finance
Law
Articles 9 & 11**

**Executive
Law**

**Uniform
Commercial
Code**

CONTRACT

Regulations

Case Law

**Federal Laws (e.g.
Intellectual
Property)**

**Procurement
Council
Guidelines**



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State Finance Law Article 11

Comprehensive statutory scheme governing the process from acquisition through disposal of:

Commodities
Services
Technology

Different laws govern some printing (Printing Law), contracts for architectural, engineering and surveying services (SFL §136-a) and public works/building services (Labor Law).



State Finance Law Article 11

Underlying Principles and Legislative Findings

Responsibility of OGS and State Agencies in cooperation with OSC and DOB to:

- Provide for the wise and prudent use of public money in the best interests of the taxpayers of the state;
- Guard against favoritism, improvidence, extravagance, fraud & corruption; and
- Facilitate the efficient and timely acquisition of commodities and services of the highest quality at the lowest practicable cost within available resources.



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New York State Procurement Council

Establishes State Procurement Council

The State Procurement Council's purpose is to review, examine and develop improvements to the State's procurement process.

[SFL §161]



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New York State Procurement Council

Procurement Guidelines

Detailed guidance to State agencies on how to conduct procurements

- Summarizes the multiple approaches to buy
- Provides guidance for successful procurements
- Provides details on various purchasing methods
- Provides examples of good procurement practices

*Revised Guidelines approved September 2009
with revised bulletins*



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Preferred Source Program

Establishes purchasing priorities for State agencies and others through the Preferred Sources program

- Law provides that specific procurements from organizations such as
 - CORCRAFT (inmates)
 - Industries for the Blind (blind citizens)
 - NYS Industries for the Disabled (disabled citizens, disabled veterans and veterans)
 - Office of Mental Health (mentally ill citizens) are **exempt** from the competitive bidding requirements

[SFL §162]



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Preferred Source Program

- Public List of Commodities & Services

<http://www.ogs.ny.gov/procurecounc/pdfdoc/pslist.pdf>

- Approval by Procurement Council
- Price Approval – not greater than 15% above Prevailing Market Price
- Governmental agencies are required to obtain from Preferred Source if commodity or service meets its “form, function and utility”



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Other Statutory Priorities

Specific statutory priority requirements for the purchase of commodities and services by State agencies

Commodity/Services:

- | | |
|-----|---------------------------------|
| 1st | Preferred Source offering |
| 2nd | OGS Centralized Contract |
| 3rd | Agency or multi-agency contract |
| 4th | Other means of contracting |

[SFL §163(3)(i)]



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Government Procurement

Establishes certain governmental requirements and social priorities

Governmental requirements: generally prohibits a Vendor from writing the specification for technology procurements and then bidding to provide the technology [SFL §163-a]; non-collusive bidding requirements [SFL §139-d]

Social priorities: purchasing environmentally-sensitive cleaning and maintenance products; not purchasing tropical hardwoods; acquiring mercury-free products; ensuring that a contractor does not discriminate



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Government Procurement (cont'd.)

Establishes requirements for the disposal or end of life of acquisitions by State agencies.

- Surplus property program [SFL §167]
- Reuse of computer equipment [SFL §168]

2008 amendment permits municipalities to purchase surplus State property prior to placing in public auction



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Government Procurement

Establishes definitions in SFL §§160 and 163 to provide a foundation of commonly understood concepts to apply within public procurement infrastructure

- Commodity
- Service
- Technology
- Costs
- Price
- Sole Source
- Single Source
- Lowest Price
- Best Value



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Principal Methods for Establishing Contracts

- Competitive Solicitation
 - Invitation for Bids
 - Request for Proposals
- 2008 amendment expressly requires use of competitive procurements as much as possible [SFL §163(7)]
- Non-competitive
 - Sole Source
 - Single Source
- 2008 amendment limits use of single source
- Emergency



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Procurement Lobbying Act

Before taking action to establish a contract, remember:

- SFL §139-j Restrictions on contacts during the procurement process
- SFL §139-k Disclosure of contacts and responsibility of offerers

<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.asp>



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Competitive Bidding

Invitations for Bids (IFBs)

Primarily used for procurement of commodities

- SFL requires commodity contracts be awarded on the basis of “lowest price” to a responsive and responsible bidder
- Responsive bidder – bid meets the minimum specifications or requirements of solicitation
- Responsible bidder – financial capacity, legal authority, integrity and past performance



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Competitive Bidding

Request for Proposals (RFPs)

- Used for procurement of services and technology
- SFL requires award based on “best value” to a responsive and responsible bidder
 - Cost is only one factor
 - Pre-established objective and quantifiable evaluation criteria
 - “Best value” to the purchaser is determinative criteria (consider quality and efficiency)



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Main Distinction between IFB & RFP – Basis of Award

“Lowest Price”

The basis for awarding contracts for commodities among responsive and responsible offerors.

[SFL§163(1)(i)]

“Best Value”

The basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Services include technology.

[SFL§163(1)(j)]



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Government Procurement & Competitive Bidding

SFL Requirements Before Issue Solicitation:

- Document the intended basis for award (such as meeting mandatory requirements, “best value” or “lowest price”).
- Determine the technical and financial evaluation criteria and relative weight.
- Quantify criteria whenever possible, to optimize quality, cost and efficiency.
- Determine and document the evaluation and selection process.
- Set forth process for unsuccessful offerer to request a debriefing *[2008 amendment to SFL § 163(9)(c)]*



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Non-Competitive Procurement

Sole Source

Sole Source means a procurement in which only one offeror is capable of supplying the required commodities or services.

[SFL §163(1)(g)]



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Non-Competitive Procurement

In a sole source procurement, must document in the procurement record:

- how Agency knows only one offerer can provide
- the basis for determination to purchase
- the unique nature of the procurement
- how to determine the price to be reasonable



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Non-Competitive Procurement

Single Source

A procurement where two or more offerers can supply the commodity or service but for stated reasons, one specific vendor is selected

[SFL §163(1)(h)]



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Non-Competitive Procurement

In a single source procurement, must document in the procurement record:

- circumstances leading to the selection of the vendor
- alternatives considered
- rationale for selecting the vendor
- how it was determined that the cost was reasonable



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Non-Competitive Procurement

- 2008 amendment directs Agencies to minimize use of single source procurements

[SFL §163(10)(b)(ii)]

- 2008 amendment incorporates new reporting obligation on the use of single source procurements

[SFL §163(14)(vi)]



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Government Procurement

Types of Contracts

- Preferred Sources
- Centralized Contract
- Multiple Awards
- Joint Purchasing
- Piggybacking
- Agency-Specific Contract
- Emergency Contract

[SFL §163]



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Government Procurement & Competitive Bidding

Centralized Contracts

Any contract for the purchase of commodities or services, established or approved by the Commissioner of General Services as meeting the State's requirements ...

[SFL§160(1)]

Centralized contracts are not subject to pre-audit by Office of the State Comptroller.

[SFL §112(2(a)] *2013 amendment to SFL*



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Criteria for OGS Centralized Contracts

- Availability of a volume discount;
- Prior and anticipated use;
- Relative cost to establish; and
- Expected actual savings for the State.

2008 amendment to SFL to consider aggregate public sales and feasibility of regional contracts

[SFL § 163(3)(b) and § 163(4)(b)]



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Examples of Centralized Contracts

- Vehicles & heavy equipment
- Pharmaceuticals & medical equipment
- Electronic Value Transfer credit cards/procurement card
- Fuel Oil, Gasoline, Road Salt
- PCs
- Rubbish Removal
- Telecommunications Systems & Services
- Hourly Based Information Technology Services



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Government Procurement & Competitive Bidding

Multiple Awards:

Contract is awarded to more than one responsive and responsible offeror:

- shall be the most practical and economical alternative;
- shall be in the best interests of the State; and
- can be used to increase opportunities for small businesses to participate in State contracts.

Example: PCs

[SFL §163(10)(c)]



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Government Procurement & Competitive Bidding

Joint Purchasing:

The Commissioner of General Services is authorized to let centralized contracts for joint purchasing by New York State and any department, agency or instrumentality of the United States government and/or any state including the political subdivisions

Examples: pharmaceuticals (Minnesota multi-state)

[SFL §163(10)(f)]



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How do you learn if OGS has a centralized contract that might satisfy your purchasing needs?



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OGS WEBSITE



Governor Andrew M. Cuomo

OFFICE OF GENERAL SERVICES



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CORE SERVICES FOR

- [STATE & LOCAL GOVERNMENT](#)
- [BUSINESS COMMUNITY](#)
- [SCHOOLS AND NONPROFITS](#)
- [THE GENERAL PUBLIC](#)

MOST REQUESTED LINKS

- [Centralized Procurement Web Portal](#)
- [Minority/Women Owned Businesses](#)
- [Empire State Builder Newsletter](#)
- [Executive Order 4](#)
- [Green Cleaning](#)
- [Parking For State Employees](#)
- [Real Estate](#)
- [State Surplus Property & Auctions](#)
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- [Emergency Food Assistance](#)

WHAT'S NEW FOR 03/30/2011



**NEW YORK STATE
SCHOOL MUSIC ASSOCIATION
"Music in Our Schools"
at the Empire State Plaza**
[DAILY SCHEDULE](#)



**DR. KING
CAREER FAIR
April 14 at the
Empire State Plaza**
[MORE](#)



**VISITING
THE EMPIRE STATE PLAZA
AND STATE CAPITOL**

- | | |
|---------------------------------|-------------------------------|
| PLACES TO SEE | PUBLIC EVENTS |
| DIRECTIONS | PARKING |
| DISABLED ACCESS | DINING |

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Entire site Procurement



OUR AGENCY'S MISSION:

"OGS manages and leases real property, designs and builds facilities, contracts for goods, services, and technology, and delivers a wide array of support services. We provide government and nonprofit agencies with innovative solutions, integrated service, and best value, in support of cost-effective operations and responsible public stewardship."

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OGS Purchaser Notification Service

- Web-based (e-mail)
- Contract award notifications
- Contract updates
- Important Commodity Information
- Unlimited, free registration

Select only those classifications of interest to you.



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OGS Purchaser Notification Service

Register as New or Update Your Registration

NYS OGS - Online Purchaser Registration - Microsoft Internet Explorer provided by New York State OGS

http://www.ogs.ny.gov/PNS/Default.asp

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PURCHASER NOTIFICATION SERVICE

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Welcome to the **OGS Purchaser Notification Service**, the online registration site for government purchasers and others interested in receiving information about OGS commodities, services and technology contracts as well as other important procurement related information.

While we think that we have designed a registration process that you will find easy to use, please follow the registration instructions carefully to help insure that you create a complete and accurate registration profile.

Registering in our new system is as simple as one-two-three:

- One: Provide some basic information about your government entity.
- Two: Select the Product and/or Services Classification areas that fit your interests.
- Three: Sit back and wait for the email notices to be delivered to your inbox.

You may be familiar with the OGS Group Number commodity coding scheme. Our new service will supplement that coding scheme with a more generic Product and Services Classification system to facilitate your registration. This simple commodity classification system uses about 55 broad categories to cover the hundreds of contracting areas covered by OGS procurement contracts.

Documents and procurement information will be available on our website whether or not you register for this new service. However, registering is the only way you will receive the email announcements regarding new contracts and registering will ensure that you receive updates and amendments to contracts as they occur as well as other important, timely contract information. We encourage you to register now. The process will take less than ten minutes.

If you would like more information about our system or detail about the registration process before proceeding you may

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Backdrop Contracts-Mini-bid

- OGS pre-qualifies companies based on qualifications via periodic/continuous recruitment.
- Prices established are “not-to-exceed” pricing.
- When agency identifies a need a mini-bid is conducted by the agency. Award can be made by lowest price or best value.
- Usually OGS contract numbers starting with CMS or CMT indicate mini-bids necessary.



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Government Procurement & Competitive Bidding

Piggybacking Agreements:

The Commissioner of General Services may approve the use of a contract let by another governmental entity, such as the United States government

Specific process found at

<http://www.ogs.ny.gov/BU/PC/SPC.asp>

2008 amendment requires specific documentation for piggyback contract.

[SFL §163(10)(e)]



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Agency-Specific Contracts

Specialized requirements needed to meet Agency mission

- Expert Witness Services
- Digital Fingerprinting Identification Equipment
- Specialized Training
- Entertainment Services



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Emergency Contracts:

- Refers to procurements arising from **unforeseen causes** without using a formal competitive process.
- Only under unusual circumstances
- Document in the procurement record:
 - nature of the emergency; and
 - procurement was conducted in a fair and equitable manner.

[SFL §163(10)(b)]



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Government Procurement & Competitive Bidding

Discretionary Thresholds for Purchasing

- State Agencies up to **\$50,000** (OGS \$85,000)
- State Agencies up to **\$200,000** (*increase effective 10/13/10*)
 - For food recycled or remanufactured commodities or services technology
 - From small businesses
 - From ESDC certified minority/women-owned business enterprises

[SFL §163(6)]



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2008 amendment that obligates State agencies to aggregate expected purchases for the same commodities or services within 12 months when determining if a procurement is under the discretionary threshold

[SFL §163(6-b)]



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Required Approvals

Contracts may have specific approvals

- Civil Service - personal services
- Office for Technology – technology
- Division of the Budget - value



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Required Approvals

For contracts valued over \$50,000 (OGS \$85,000; SUNY Flex):

- Department of Law
- Office of the State Comptroller

SFL §§112 and 163 require these contracts and purchases be supported by a procurement record and receive OSC approval



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Other Relevant Provisions

SFL §138

Non-Assignment of State Contracts

Labor Law §§220 and 240

Prevailing Wage Rate

MWBE goals and considerations

Executive Law Article 15-A and regulations

Diesel Emissions Reduction Act

Environmental Conservation Law §19-0323

Mercury-added Consumer Products Law

Article 27, Title 21 Environmental Conservation Law



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Other Relevant Provisions

SFL §139-d

Non-Collusive Bidding Certificate

SFL § 165 (5)

MacBride Certification

SFL §§139 j & k

Procurement Lobbying

SFL §163 (9)(f)

Responsibility Questionnaire

SFL §139-i

Foreign Business Enterprises



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Other Relevant Provisions

Workers' Compensation and Disability Insurance

Tax Law §5-a

Sales Tax Certification

SFL §163(4)(g)

Consultant Disclosure

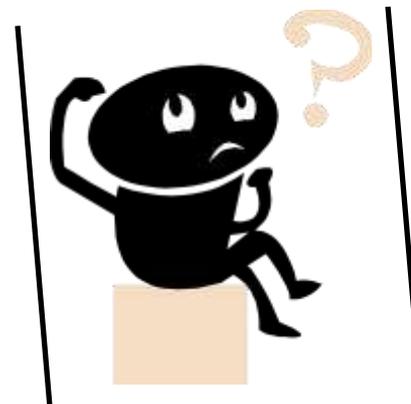
Executive Order 4

Establishing a State Green Procurement and
Agency Sustainability Program



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QUESTIONS?



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Presenter's Contact Information

A

Anne G. Phillips
Deputy Counsel
OGS Legal Services
41st Floor, Corning Tower
Gov. Nelson A. Rockefeller
Empire State Plaza
Albany, NY 12242
Ph. 518 474-5607
Fax 473-4973
anne.phillips@ogs.ny.gov
OGS Website <http://www.ogs.ny.gov/>



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