



New York State Comptroller
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Independent Oversight: OSC's Contract Review Safeguards Public Funds

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As New York's Chief Fiscal Officer, the Comptroller is responsible for ensuring State and local governments use taxpayer money effectively and efficiently. One way the Office of the State Comptroller (OSC) exercises this responsibility is through the review of contracts. This independent oversight deters waste, fraud and abuse; ensures the integrity of the process; and protects taxpayers, agencies, local governments, nonprofit organizations and other vendors.

The recent Enacted State Budget for State Fiscal Year (SFY) 2022-23 allowed at least \$11 billion in spending without a competitive process or the benefit of an OSC review. These actions build on exclusions adopted in prior budgets that have significantly eroded the Comptroller's vital role in independent review and approval of contracts. OSC's oversight adds tremendous value, and contract review was completed in an average of just 5.3 days in 2021. A [bill](#) to statutorily restore certain OSC oversight authority for billions of dollars in contract spending should be enacted in this legislative session.

Background: The Benefits of OSC's Contract Review

Under [Section 112 of State Finance Law](#), the Comptroller is required to review and approve certain government contracts before they become effective. OSC contract oversight extends to most State agency contracts, generally those in which the contract value exceeds \$50,000. OSC's review is conducted with an eye toward ensuring that:

- Competition is adequate and fair to all qualified vendors, reducing costs and providing good value to the State;
- Funding for the contract has been reserved and agencies do not commit to greater spending than is authorized; and
- Vendors are responsible and eligible for government contracting.

With strong oversight, potential problems with a procurement are identified and addressed before taxpayer money has been spent, projects have advanced, and programs and services are initiated. Not only does this independent review have a strong deterrent effect on waste, fraud and abuse, it can also provide additional benefits to agencies by increasing their leverage in negotiations with vendors who may otherwise attempt to take advantage of the State. Without this oversight, billions of dollars may be spent without insight regarding how vendors are selected, and how reasonableness of contract terms are established.

The savings for taxpayers are significant. In 2021 alone, OSC rejected 1,559 contracts and related transactions valued at \$6 billion primarily due to errors, improprieties or lack of documentation. For many of these contracts, corrections and improvements were made by the procuring agencies, ultimately resulting in tens of millions in estimated savings for New York's taxpayers. Not reflected in this estimate are savings and efficiencies that are built into contracts resulting from

discussions between OSC and agency staff before the contract is approved. In addition, these savings do not account for the deterrent effect that strong independent oversight provides.

OSC review also ensures a competitive playing field. Pursuant to New York State Economic Development Law, OSC reviews agency requests to contract with vendors without advertising the procurement opportunity, which would result in contracts being awarded without competitive bidding. When contracts are awarded without competitive bidding it is difficult to determine whether the price is reasonable and the contract is in the best interest of the State.

In 2021, OSC reviewed 1,203 requests for exemption from bidding and advertising and rejected 169. While some exemptions are necessary, contracts awarded without competitive bidding often can be inconsistent with the intent of State procurement laws, excessive, or otherwise not in the best interest of the State. In such cases, OSC may decline requests, or limit the value or duration of the exemption.

Another valuable service OSC provides to the vendor community and others is the independent review of protests and appeals to a State agency's or SUNY campus's contract award decisions. If a solicitation was improperly awarded, or a contractor believes their firm was disadvantaged in some way, OSC can provide an independent review of their concerns. Removing OSC's independent oversight deprives interested parties of an independent and impartial analysis of their concerns with the contract award.

Gradual Erosion of Independent Review

OSC's contract approval authority has been eroded and limited over the past decade, resulting in billions of State spending being authorized without the standard protections provided by OSC's independent oversight.

Major changes to remove OSC's oversight over billions of dollars were enacted in the SFY 2011-12 and SFY 2012-13 Enacted Budgets. The SFY 2011-12 Enacted Budget included provisions to exclude certain contracts of the State University of New York (SUNY), the SUNY Construction Fund, the City University of New York (CUNY) and the CUNY Construction Fund from OSC review and approval. The SFY 2012-13 Enacted Budget excluded centralized contracts let by the Office of General Services (OGS) from such oversight.

In subsequent years, a number of additional imprudent exemptions were implemented; this year's State budget allowed for at least \$11 billion in spending without a competitive process or the benefit an OSC review. For additional information, read the [Comptroller's report on the Enacted Budget](#).

A common justification for avoiding OSC’s contract review is that it imposes undue delay in the procurement process. State law calls for OSC to review contracts within 90 days (with certain exceptions); however, in 2021 OSC reviewed 18,605 contract transactions valued at \$173.4 billion in an average of just 5.3 days, as shown in Figure 1. Furthermore, the reviews of 94 percent of transactions were completed within 15 days or less. (See Figure 2.) These results clearly demonstrate that the Comptroller’s efficient review has little impact on the overall time frame of procurements, which can last months and even years.

FIGURE 1:
Average Number of Days for OSC Transaction Review – Calendar Year 2021

Type of Transactions	Number	Average Days for Review	Percentage of Total Contract Transactions	Total Value (in billions)
New Contracts	7,763	6.9	41.7%	\$56.3
Contract Amendments and Change Orders	10,842	4.1	58.3%	\$117.1
Total	18,605	5.3	100.0%	\$173.4

FIGURE 2:
Time to Complete OSC Contract Review for All Contracts in 2021

Days	Contract Transactions	Percentage of Total Contracts	Amount (in billions)	Percentage of Total Value
0-15	17,567	94.4%	\$49.0	28.3%
16-30	865	4.7%	\$8.5	5.1%
31-45	123	0.7%	\$113.5	65.5%
46-60	31	0.2%	\$0.3	0.2%
61-75	11	0.1%	\$0.2	0.1%
76-90	8	0.0%	\$1.5	0.9%
Total	18,605	100.0%	\$173.4	100%

Notes: Amounts are rounded to the nearest tenth of a percent. Completed contract reviews in the 76-90 day time frame represent 0.04 percent of the total.

Source: Office of the State Comptroller

Restoring the Comptroller's Authority

OSC's oversight is an independent check on the State's procurement process and helps to ensure that agency procurements are fair, efficient, transparent, and cost-effective, and does not present an impediment to completing a timely procurement.

In 2019, a memorandum of understanding (MOU) among the Executive, the Comptroller, SUNY, CUNY, and the SUNY and CUNY Construction Funds was executed. This MOU administratively restored the Comptroller's contract oversight of certain contracts previously exempted from review. However, this authority (previously enshrined in statute) is only provided in an MOU and may be terminated upon 10 days' written notice. While the MOU was a step toward ensuring important taxpayer protections, contract oversight provisions such as these should be again embodied in law.

Toward this end, the Executive and the Legislature are urged to restore statutorily the Comptroller's independent oversight to review certain SUNY, CUNY and OGS contracts by passage and enactment of [S6809-A](#) (Reichlin-Melnick) / A7925-A (Zebrowski). Furthermore, the Executive and the Legislature should refrain from authorizing any further exemptions, via the State Budget or through other measures, that limit or remove competitive bidding and the Comptroller's ability to pre-audit contracts.

Restoring the Comptroller's independent oversight authority over contracts and preventing any further erosion of it are important steps to advance accountability and efficiency. Enacting the above-referenced bill will help to:

- **Ensure that taxpayer funds are protected from waste, fraud and abuse:** OSC's review ensures that contracts are competitive, where required, and awarded to vendors providing the best value to the State.
- **Ensure a fair procurement:** The lack of an independent review increases the chances for "preferred" vendors to repeatedly receive contract awards unfairly.
- **Allow for an independent assessment of agency determinations of vendor responsibility:** OSC's contract review helps to ensure that vendors do not have performance issues in other states, that appropriate insurance coverage is carried and current, and that executives of contractors are reputable.
- **Protect New York State resident and taxpayer data:** OSC reviews contracts that involve the handling of personally identifiable information and checks for provisions to safeguard that data. Removal of this safeguard increases the likelihood of exposure of State taxpayer data if best practices are not required.

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