

INTRODUCTION TO PROCUREMENT FOR NYS AGENCIES

ROBERT VANDERBLES, SENIOR ATTORNEY
OFFICE OF GENERAL COUNSEL
NEW YORK DEPARTMENT OF STATE*

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PURPOSE

- Facilitate agency's mission
- Promote fairness in contracting
- Guard against favoritism, improvidence, extravagance, fraud, and corruption

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BEFORE CONDUCTING A NEW PROCUREMENT

- Order of Precedence for method
- Procurement Guidelines that agencies must follow

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BEFORE CONDUCTING A NEW PROCUREMENT

- Preferred Sources
 - Corcraft, etc.
- May complain to Procurement Council if not used by agency

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BEFORE CONDUCTING A NEW PROCUREMENT

- Over one thousand centralized contract awards
- Agencies can negotiate a lower price
- P.O.s not subject to OSC pre-audit approval

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CONDUCTING A NEW PROCUREMENT

- Formal competitive procurement not required for purchases under \$50,000.00
- Cannot split contracts to fit beneath threshold
- Discretionary threshold up to \$200,000.00 for purchases from MWBEs, SDVOBs, NYS Small Business, for recycled commodities/tech, agricultural products produced or harvested in NY

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CONDUCTING A NEW PROCUREMENT

- Competitive Procurements for:
 - Commodities= lowest price, Invitation for Bids
 - Services= best value, Request for Proposals

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CONDUCTING A NEW PROCUREMENT

- Contracts over \$50,000.00 must be listed in contract reporter at least 15 days before bid is due
 - OSC Bid Protest
 - Contract Reporter Exemption Request

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CONDUCTING A NEW PROCUREMENT

- If receive advertising exemption approval, agency must still publish notice of award and reasons for exemption.
- Non-competitive awards also include recipient, value, purpose

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CONDUCTING A NEW PROCUREMENT

- Single source: although two or more offerors can meet agency need, agency documents written findings setting forth reasons for award to one
- Sole source: only one offeror is capable of supplying needed services or commodities
- Subject to OSC approval

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CONDUCTING A NEW PROCUREMENT

- Single source- factors
 - Circumstances for leading to selection of vendor
 - Alternatives considered
 - Rationale for selecting specific vendor
 - Cost reasonableness

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CONDUCTING A NEW PROCUREMENT

- Single source-in CRER
 - Description of goods/services
 - Circumstances and material and substantial reasons why competitive procurement not feasible
 - Vendor selection justification
 - Why the period of time requested is the minimum necessary to ameliorate the circumstances which created the material and substantial reasons for this request
 - If a future competitive process is anticipated, provide key dates such as CR publication, bid due dates, bid opening dates, evaluation, and notice of award
 - Justification of price

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CONDUCTING A NEW PROCUREMENT

- sole source
 - Is the procurement unmotivated by arbitrary restrictions?
 - Is the product/service unique?
 - Is the benefit unique?
 - Is the price reasonable?

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CONTRACT TERMS

- Appendix A
 - Order of precedence
 - MWBE, SDVOB, funding requirements

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CONTRACT TERMS

- Master Contract for Grants
 - Req'd over \$10,000.00
- Article 11-B, competitive procurement, and approval environment

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CONTRACT TERMS

- Indemnification
 - Identify whether needed for this procurement
 - Broad indemnification may cause issues after award at time of contract execution

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CONTRACT TERMS

- Publicity/confidentiality
 - Promotional signs for site based projects
 - Procedure by which contractor can identify trade secrets
 - Consider constraints of FOIL

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CONTRACT TERMS

- ITS Technology policies
 - Date and time conversion language
 - Cyber incident response
 - Procedure by which to request waiver from policy

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VENDOR RESPONSIBILITY

- Agency determines responsibility prior to award
- Elastic term
- FLIP analysis

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VENDOR RESPONSIBILITY

- Financial and organizational capacity
 - Audits
 - Contractor experience

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VENDOR RESPONSIBILITY

- Legal Authority
 - Licenses
 - Charities registration
 - Debarment

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VENDOR RESPONSIBILITY

- Integrity
 - Indictments and convictions
 - Investigations
 - Responsiveness and hostility

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VENDOR RESPONSIBILITY

- Past Performance
 - Prior monitoring
 - Failure to complete projects
 - Inability to follow directions
 - Litigation

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VENDOR RESPONSIBILITY

- What is isn't:
 - Disregarding procurement criteria to award to a different contractor who is "more responsible"

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VENDOR RESPONSIBILITY

- OSC may return a contract unapproved because of its own vendor responsibility determination

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VENDOR RESPONSIBILITY

- Resources and tools
 - Vendor Responsibility Questionnaire for contracts, and subcontractors known at time of award, over \$100,000.00.
 - Some entities exempt from VRQ, but OSC reserves right to request one

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VENDOR RESPONSIBILITY

- Resources and tools
 - E-courts/PACER
 - Charities Bureau
 - OpenBookNY
 - Your preferred search engine

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VENDOR RESPONSIBILITY

- Flags, findings, and follow up
 - Reach out, request documents
 - If issue is unresolved, determine who will monitor
 - Identify corrective action taken

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VENDOR RESPONSIBILITY

- Non-Responsibility Determination
 - Liberty interest → Due process
 - Written notice, more than a mere gesture

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VENDOR RESPONSIBILITY

- Non-Responsibility Determination
 - Authority to determine responsibility
 - Statement of preliminary finding of non-responsibility
 - Conduct that gave rise to preliminary finding
 - Opportunity to provide additional information and evidence
 - Deadline

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VENDOR RESPONSIBILITY

- Non-Responsibility Determination
 - Opportunity to be heard does not need to be formal hearing on the record
 - Can be by letter
 - If meet, take minutes and provide chance to agree on accuracy

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VENDOR RESPONSIBILITY

- Determination of non-responsibility should not operate as debarment for all future contracting, absent statutory authority.

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VENDOR RESPONSIBILITY

- Executive Order No. 192
 - Attention to vendor responsibility should not end with the contract award
 - Must rely on responsibility determinations made by other state entities
 - Waiver procedure
 - Selection absent waiver is breach of duty as public officer

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VENDOR RESPONSIBILITY

- Contract terms for continued review
 - Master Grant Contract(IV)(N)
 - Appendix A, Records
 - Consider your own reporting language
 - Rock Stars, Candy, and Contracts

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