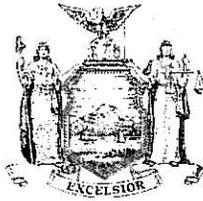


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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

OSC No. 4

MEMORANDUM
RE
AN ACT

to amend the state finance law, in relation to establishing the ethical standards for state agency contractors act

PURPOSE: The purpose of this legislation is to establish ethical standards for certain state agency contractors.

SUMMARY OF PROVISIONS: Section 1 sets forth the Legislature's findings and intent.

Section 2. Provides that the proposal when enacted shall be known and may be cited as "the ethical standards for state agency contractors act."

Section 3. This bill amends the State Finance Law by adding a new Section 148 relating to ethical standards for contractors performing inherently governmental and mission-critical functions or rendering a service or services pursuant to an information-risk contract. This Section also defines "state agency contractor," "state agency," "employee," "inherently governmental and mission-critical function," "nonpublic information," "proprietary information," "information-risk contract," "organizational conflict of interest," "personal conflict of interest" and "state agency contract."

Additionally, this Section requires that any contract executed by a state agency with a contractor performing inherently governmental and mission-critical functions or rendering services pursuant to an information-risk contract, prohibit contractors from organizational conflicts of interest with respect to such state agency contract and prohibit a contractor's employees performing inherently governmental and mission-critical functions or rendering information-risk contract services from personal conflicts of interest arising with respect to such state agency contract. The contract must also include a nondisclosure agreement or clause requiring the contractor to certify that it has an executed nondisclosure agreement for each individual employed by the contractor pursuant to a state agency contract as a condition of access to nonpublic information. The contract must require that agreements between contractors and third parties must

protect the state agency's nonpublic information and require such contractors to obtain written consent from the state agency prior to disclosing nonpublic information to subcontractors or others. The contract must require contractors to train at least biannually its employees and subcontractors, if any, rendering services on state agency contracts regarding organizational conflicts of interest, personal conflicts of interest and protection of nonpublic information and the consequences for unauthorized disclosure or misuse of such information. Finally, the contract must require contractors to immediately notify the state agency regarding any such organizational or personal conflicts of interest, or the misuse or unauthorized disclosure of nonpublic information and impose consequences for violations.

This Section also provides that contractors shall be responsible for the security of any system relating to nonpublic information whether such system is maintained electronically or otherwise. Contractors involved in source selection and related activities supporting award of state agency contracts shall be subject to laws and regulations preventing the release of nonpublic information.

Contractors performing inherently governmental and mission-critical services or information-risk contract services for which more than five million dollars is to be paid and involving work in excess of one hundred and twenty days shall be required to have a written code of business ethics and conduct. The provisions of the Act shall not apply to contracts for the purchase of commodities.

Finally, this Section authorizes the Comptroller, in his or her discretion, to promulgate rules and regulations addressing the appropriate content for a model written code of business ethics to be utilized by contractors performing inherently governmental and mission-critical functions, or rendering information risk contract services, for the purpose of preventing organizational and personal conflicts of interest and protecting nonpublic information.

Section 4. Provides for an immediate effective date.

PRIOR LEGISLATIVE HISTORY: S.7375 and A.9692 of 2013-2014

JUSTIFICATION: To a great extent, state agencies and public authorities rely on contractors to help accomplish a broad array of complex, inherently governmental and mission-critical functions. State agencies and public authorities contract for services that involve the contractors' exercise of judgment, providing operational and policy advice to state officers and employees, overseeing other contractors and, at times, working alongside state officers and employees on the same projects. This intermingling of public and private workforce reveals a need to assess what processes are in place to ensure the integrity of government operations and maintain public confidence.

While a majority of contractors deliver services with integrity, some contractors could, nonetheless, engage in misconduct during the course of the contract term –for example, engaging in acts for personal financial gain, accepting inappropriate gifts, or inappropriately negotiating for certain jobs.

Furthermore, in carrying out the day-to-day tasks for state agencies and public authorities, contractors often require extensive access to and use of nonpublic government information. Protection of nonpublic information is critical, because unauthorized disclosure can erode the integrity of government operations and lead to situations in which such information is misused for private gain, potentially harming important interests such as the privacy of individuals, commercial business proprietary rights, security, and law enforcement.

Opportunities for organizational and personal conflicts of interest by contractors, and the misuse of nonpublic information by contractors through negligence or misconduct, can have a significant effect on the government's ability to perform its primary functions, potentially resulting in inappropriate use of taxpayer dollars, damaged reputation, and loss of public trust.

While few cases of improper conduct by contractors have been publicly identified, safeguards are lacking to identify whether organizational or personal conflicts of interest exist among contractors. The cost to the state of contractors or their employees engaging in actions reaping organizational or personal gain – an outcome increasingly likely based on sheer numbers – would likely never be known, let alone calculable, as long as there is no transparency.

FISCAL IMPLICATIONS FOR STATE: This bill has no significant State fiscal impact.

EFFECTIVE DATE: This act shall take effect immediately.