



Vendor Responsibility

March 2006

New York State
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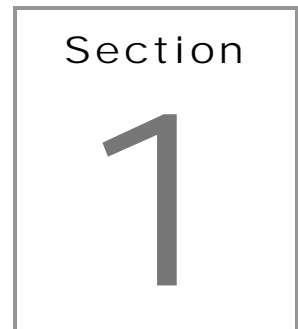
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Executive Summary

When the State awarded 73 contracts to firms owned by an individual who tried to bribe federal officials in order to cover up shoddy work, it denied other qualified, honest construction firms the opportunity to earn public funds. In the case of Olympia Construction and an affiliate, contracts were awarded after the owner of the firms had been debarred by the federal government and publicly identified as not worthy to compete for federal contracts. A check of available information likely would have resulted in the award of 73 contracts, and \$7 million in taxpayer dollars, to other firms. Once the State's Office of General Services learned of the debarment and other relevant facts, it determined the State should not do business with the firms, either.

Unlike the federal government and the City of New York, New York State does not have a central or even consistent means of determining whether vendors competing for contracts are reputable and qualified to meet the demands of the contract. Each State agency conducts its own review. Each firm, whether competing for its first or one hundredth State contract, is required to provide information that will help the agency make its determination.

Ultimately, the majority of State contracts valued at more than \$15,000 must be reviewed and approved by the State Comptroller before they can become effective.¹ The Comptroller's review ensures that applicable laws were followed and that the contract was awarded properly. Since January 1, 2005, the Comptroller's review has also considered State agency efforts to determine if the selected vendor is responsible.

¹ In State fiscal year 2004-05, the Office of the State Comptroller reviewed 13,707 contracts valued at nearly \$16.6 billion. This is in addition to 27,591 contract amendments for a total of 41,298 transactions valued at more than \$28 billion last fiscal year.

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Various statutes generally require State agencies and public authorities to determine that the vendors selected for contracts are the lowest *responsible* bidders. The goal of Comptroller Hevesi's multi-phase plan is to improve the quality and consistency of responsibility determinations by State agencies. Contracts submitted to the Comptroller's Office for approval now must include an affirmative declaration that the vendor has been determined to be responsible, and the Comptroller's Office has begun to ask questions about specific information used to make the determination and provide resources to assist agencies in determining vendor responsibility.

The Comptroller's Office initiated a plan to improve vendor responsibility determinations in the award of State contracts in 2003. In 2004, the Comptroller launched the Vendor Responsibility Initiative. A new Project Team, formed with approval from the Department of Civil Service and the Division of the Budget, was formally established in early 2005 to fully implement the initiative. Since that time, the Vendor Responsibility Team has implemented two strategies to meet this goal. The Vendor Responsibility Team has been soliciting and utilizing input from procurement staff in State agencies and from the business community to develop a computerized State system to centralize information relevant to responsibility determinations, while simultaneously working to standardize the criteria by which responsibility determinations are conducted.

During the past year, the Office of the State Comptroller surveyed 118 State agencies and associated entities to gauge the need and support for a centralized electronic vendor information repository, which is aimed at creating efficiencies for both contracting agencies and potential contractors. Comptroller's Office staff members have conducted 47 outreach sessions, involving 1,628 participants representing more than 57 State agencies, 65 companies that do business with the State and various organizations comprised of vendors, including the New York State Business Council and the Partnership for New York City.

Throughout 2005 Comptroller's Office staff, in cooperation and collaboration with contracting entity and vendor representatives, conducted a series of work sessions to jointly analyze the existing processes, identify improvement opportunities and develop user requirements for an automated system. In 2005, the Vendor Responsibility Team began participating in the contract review process to increase the attention afforded responsibility determinations. If an agency's basis for the vendor responsibility determination is not adequately documented in the procurement record, the Office of the State Comptroller's auditors will provide assistance to the contracting agency to better document actions taken, may return the contract unapproved to the agency for further

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consideration of the responsibility issue or may undertake its own review of the proposed contractor's responsibility.

To date, the Vendor Responsibility Team has reviewed vendor responsibility determinations for some 17,000 contracts submitted to the Office of the State Comptroller for approval. For approximately 5,000 of these contracts the Vendor Responsibility Team has provided a more detailed review than was documented by the State agencies submitting the determination. In all cases, findings of the Comptroller's Office review were shared with the agency awarding the contract, and in some cases issues identified required further work by the agency.

When contracts are returned for further consideration, the Office of the State Comptroller, when requested, provides agencies with technical assistance concerning responsibility determinations. The Vendor Responsibility Team, for example, assisted the Developmental Disabilities Services Office (DDSO), which is part of the Office of Mental Retardation and Developmental Disabilities, throughout the vendor responsibility process in 2005, providing technical assistance as requested. After attempting to address a vendor's past performance issues, the agency ultimately determined the vendor to be non-responsible. The Office of the State Comptroller supported the agency's determination.

Some findings by the Office of the State Comptroller, however, demand return of the contract unapproved. In November 2005, a review by the Office of the State Comptroller determined that a vendor selected to receive a \$46 million Thruway Authority contract for construction of the interchange between Interstates 87 and 84 near Newburgh in Orange County was a "non-responsible" bidder. Following an extensive review, the Comptroller's Office identified serious concerns about Worth Construction and returned the contract unapproved. While some of the concerns identified by the Office of the State Comptroller were already known to the Thruway Authority, others were not. Upon review of the information, Authority officials agreed the contract should not be approved.

Although Worth initiated legal action challenging the Comptroller's determination and requesting a preliminary injunction to prevent the award of the contract to another vendor, a January 2006 New York State Supreme Court opinion upheld the Comptroller's determination.

In the future, the comprehensive, shared vendor responsibility system currently under development will help ensure that issues are available for review by contracting entities prior to tentative contract award.

As work on this collaborative effort continues, requirements will be refined and issues that may arise will be addressed with input from the

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stakeholders. For example, model questionnaires will be posted in April with an invitation for interested parties to offer suggestions.

The goal is to roll out the first phase of the computerized system before the end of the calendar year. In Phase I, vendors will be provided the ability to enter information online and to upload attachments as additional information. As a result, vendors will be able to enter information one time in one place as they compete for State contracts, effectively eliminating the duplicative paperwork they must currently file. The shared system also will afford vendors the ability to update information to reflect corrective action taken and the remediation of issues.

Over the long term, the comprehensive, shared Vendor Responsibility System, as envisioned, will achieve three important goals: alleviate the duplicative paperwork burden on vendors, streamline interactions between vendors and contracting entities, and improve the efficiency and quality of vendor responsibility reviews by providing high-quality data and reducing time frames and resources required to conduct reviews. In addition, a shared, computerized system will leverage existing information sources and promote compliance among the vendor community with existing laws and regulations.

Since the Office of the State Comptroller began working on this initiative, development of a shared vendor responsibility system has been advocated by various members of the New York State Legislature, members of the business community and State agencies. In addition, the *New York Daily News* has advocated for a statewide system similar to the New York City VENDEX database, and a number of media organizations have published articles which indicate a need for such a system. While this year's Executive Budget also included a provision to develop an advisory council to examine the need for a shared system, further study is unnecessary given the substantial progress made to date. Stakeholders proposed to be represented on the advisory council described by the Executive have been included in both the analysis and development phases. The experience and expertise of vendor representatives and State agency staff has been solicited throughout the process and remains integral to the continued development of this shared system.

Section
2

New York's Commitment to Doing Business with Responsible Vendors

Procurement laws and guidelines generally require the award of State contracts to responsible vendors. Vendor responsibility generally means that a vendor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. It is a contracting agency's duty to evaluate the responsibility of a prospective contractor. A responsibility determination, wherein the contracting agency determines that it has reasonable assurances that a vendor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting the contracting agency and the State against failed contracts.

According to *Governing, the Magazine of States and Localities*, New York's "[c]ontracting and purchasing processes are far more rational and professional than in a majority of states around the country." In the Magazine's 2005 report card on government performance, the effective management of contracting and purchasing was singled out as New York's strength.²

Undoubtedly, this recognition is the result of New York's laws—including those requiring the State to do business with responsible firms—and its system of checks and balances in the award of contracts. State agencies, the Attorney General, the Office of the State Comptroller and vendors interested in doing business with the State all play important roles in promoting fairness in the award of State contracts. How each entity fulfills its role is either expressly defined or generally guided by various State laws and regulations. In the case of State agencies, for example, in addition to

² "Grading the States 2005." *Governing, the Magazine of States* 18.5 (February 2005): 75.

provisions of the State Finance Law and the Economic Development Law, guidance for procurement policies and procedures is provided through the State Procurement Council. In addition, State agencies rely on training and technical support offered by both the Office of the State Comptroller and the Office of General Services (OGS) to effectively carry out their contracting responsibilities.

Article V, Section 4 of the New York State Constitution designates the Comptroller as the head of the Department of Audit and Control. A 1925 constitutional amendment added the function of “pre-audit” to the Comptroller’s duties.³

Section 112(2) of the State Finance Law requires review and approval by the Comptroller of all State contracts in excess of \$15,000.⁴ The purposes of this requirement include protecting the public from governmental misconduct and improvidence and ensuring that contracts are fair and reasonable.⁵ The Comptroller’s review ensures State agency compliance with a number of statutory requirements regarding contract procurement, the most widely applicable of which are set forth in Section 163 of the State Finance Law, which was added by the “Procurement Stewardship Act” (PSA) of 1995. The PSA established operating principles “to facilitate each state agency’s mission, while protecting the interest of the state and its taxpayers and promoting fairness in contracting with the business community.”⁶

Section 8(6) of the Public Buildings Law requires that all contracts for public work in excess of \$5,000 may be awarded to the lowest responsible and reliable bidder. Section 38(3) of the Highway Law requires that contracts for the construction or improvements of highways be awarded to the lowest responsible bidder, "as will best promote the public interest."

³ Constitutionally, the New York State Comptroller is required to “audit all vouchers before payment and all official accounts....” Article V, Section 1 of the New York State Constitution.

⁴ Chapter 95 of the Laws of 2000 raised the threshold for the pre-approval of contracts by the State Comptroller from \$10,000 to \$15,000. This legislation also raised the threshold for discretionary purchases by the Commissioner of General Services from \$30,000 to \$50,000. This conformed to the increased discretionary purchasing authority for State agencies to buy up to \$50,000 of commodities and services from small businesses and minority- and women-owned business enterprises, and of recycled and remanufactured products. Furthermore, subdivision 6-a was added to Section 163 of the State Finance Law, which authorizes the Commissioner of General Services to enter into contracts for commodities and services without Comptroller approval and without pre-award notice in the Contract Reporter in an amount not exceeding \$30,000.

⁵ *City of New York v. State of New York*, 87 N.Y.2d 982 (1996); *Parsa v. State of New York*, 64 N.Y.2d 143 (1984); *Konski v. Levitt*, 69 A.D.2d 940 (3d Dep’t, 1979).

⁶ Section 163(2) of the State Finance Law.

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Consistent with the goal of obtaining the best quality goods or services for the lowest possible price, competition in awarding contracts is always desirable. Specific thresholds defined in law determine the minimum contract value for which competition is mandatory and a formal award process must be followed. In addition, when awarding contracts at values greater than the prescribed thresholds, agencies making awards must document all steps taken to ensure fair competition and factors influencing contracting decisions; this documentation serves as the official procurement record for each contract awarded.

In all procurements, government should ensure it is doing business with reputable, reliable firms. Not only is it good business practice to determine that the proposed contractor has the integrity to justify the award of public dollars, and the capacity to fully perform requirements of the contract—in other words, that the vendor is responsible—it also is demanded, in most cases, by the law.

Despite the protections built into the contract award process in New York State, agency personnel conducting procurements may face pressure to award contracts to other than a responsible bidder. Some firms engage lobbyists in an attempt to win a contract award. In other cases, time requirements or other demands of products or services being awarded encourage people involved in the process to take short-cuts.

In recognition of the potential for lobbying to improperly influence the award of contracts, legislation was signed in 2005 to restrict contacts permitted during procurements with governmental entities. The new law requires governmental entities to make a record of attempts to influence the outcome of procurements. It also provides for procedures to deal with inappropriate contacts and penalties for vendors or their representatives who try to influence procurements in an impermissible way. Further, it provides for vendors to be determined non-responsible for violations of the laws governing procurement lobbying.

As a result of the new law, contracting agencies must document for the procurement record attempts to influence the procurement. In addition, agencies must supply documentation to show compliance with the new law and its determination that the vendor is responsible in terms of not having violated lobbying provisions of law. These records will ensure that applicable rules were followed and that agency personnel did not succumb to any pressure to award the contract to a particular vendor, or that an interest in awarding the contract quickly did not produce an unfair result.

The Comptroller's authority to determine whether a vendor is responsible, regardless of the determination made by the agency awarding the contract, was recently upheld in New York State Supreme Court. In part, the Court decision noted that the Comptroller's practice of "reviewing and approving contracts" entered into by the Thruway Authority has been in effect for more than 55 years.⁷ The Thruway Authority adopted a resolution in 1950, the same year it was created, requesting that the Comptroller review all of its contracts in the same manner State agency contracts are reviewed. The Comptroller's express statutory authority to review and approve State agency contracts, however, has been in effect for over 90 years.

Partially as a result of this long-standing practice of the Comptroller exercising oversight, New York has escaped procurement scandals of the magnitude recently uncovered in neighboring states. Both Connecticut and New Jersey, among other states, have fallen victim to a host of contracting-related scandals, including pay-to-play schemes. Connecticut's Governor John Rowland resigned in 2004 during an impeachment inquiry and federal investigation into contract steering under his tenure.⁸ Federal prosecutors in New Jersey investigated influence-peddling in former Governor James McGreevey's administration.⁹

Connecticut's Governor M. Jodi Rell has pursued legislation to create an independent State Contracting Standards Board to establish uniform procurement standards, audit state contracting agencies and discipline agencies that fail to meet standards.¹⁰ In New Jersey, a report to Governor Jon S. Corzine by the Ethics and Governance Reform Transition Policy Group offers a series of recommendations to "bolster the likelihood that contracts will be awarded on a merit basis and performed with integrity."¹¹

Although smaller indiscretions have been uncovered in New York and newspaper stories have revealed the award of contracts to disreputable firms, New York has demonstrated that it does not need a high-profile scandal to provide the motivation to improve its processes. In fact, New York's approach is to strengthen the processes by proactively building in safeguards against scandal. For example, in 2003, Comptroller Hevesi

⁷ *Worth Construction Co., Inc. v. Alan G. Hevesi, as Comptroller of the State of New York, and the New York State Thruway Authority*, 807 N.Y.S.2d 558 (Sup. Ct. Albany County 2006).

⁸ "Tough Ethics Laws Urged." *The Hartford Courant*. September 1, 2004: B5.

⁹ Pingree, Chellie and Craig Holman. "Legislature Must Follow McGreevy on Pay-to-Play." *Asbury Park Press*. October 1, 2004.

¹⁰ Keating, Christopher, et al. "Assembly Ends with Flurry of Activity; Governor Dissatisfied." *Hartford Courant*. June 9, 2005: A1.

¹¹ Ethics and Governance Reform Transition Policy Group. Final Report. January 2006. <www.state.nj.us/governor/home/pdf/ethics.pdf>.

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rescinded Office of the State Comptroller approval of a contract awarded by a subsidiary of the Thruway Authority, the Canal Corporation, granting exclusive development rights along the State canal system. The rescission was based on evidence that Canal Corporation officials made false and misleading statements to secure approval of the contract by the Office of the State Comptroller.

In the case of vendor responsibility, it is time for the State to employ technology to ensure consistent compliance with and application of the law. Coupling this technology with improved processes used to determine the responsibility of vendors can make it easier for reputable vendors to do business with the State at the same time it facilitates accurate responsibility determinations by State agencies awarding contracts.

Section
3

The New York City Experience

State Comptroller Alan Hevesi brought to the Office of the State Comptroller experience as the Comptroller of the City of New York. The New York City Charter requires that all contracts, contract amendments, leases and concessions between city agencies and vendors are registered by the New York City Comptroller. The Comptroller can determine whether to register, reject or object to the registration of a contract. Among other factors, when making this determination, the Comptroller considers the integrity of the contractor and performance issues.

New York City has a Vendor Information Exchange System (VENDEX) to assist with the assessment of vendor integrity and performance issues. VENDEX was developed pursuant to a 1987 law passed by the City Council directing the Mayor and the Comptroller to jointly establish a computerized database containing information about contracts, franchises and concessions entered into by mayoral agencies. The database was expanded to include information about people and companies with whom the City does business in response to laws enacted by the City in 1991.

These legislative initiatives were passed as a result of the City Council's concern that contracts be awarded only to honest and capable vendors and that the City obtain the highest quality and quantity of goods and services. The system was part of a response to corruption scandals, including those at the City's Parking Violations Bureau where contracts to collect overdue parking fines and purchase portable computers were secured through bribery of officials.

Today, the VENDEX computer system supports City agencies in reaching responsibility determinations. It stores:

- Information from the VENDEX Questionnaires,

- Cautionary information reported on VENDEX Questionnaires and information supplied by various sources, including City agencies and law enforcement organizations,
- Contract performance evaluations,
- Liens and warrants compiled by the City's Department of Finance (DOF),
- Tax filing status as indicated by DOF, and
- Information on all City contracts and purchase orders.¹²

In March 2003, the Office of the State Comptroller issued an audit of the Vendor Information Exchange System (2001-N-10). Overall, the audit found that the Mayor's Office of Contracts maintains an effective database system. The audit included four recommendations intended to improve the system: enter questionnaires in a timely manner, periodically check the accuracy of data on the system, remind senior management at agencies to forward contract performance evaluations so that they can be entered in a timely manner, and follow up more aggressively with agencies that repeatedly do not provide necessary performance data.¹³

Although information in the VENDEX system could be valuable to State agencies making procurement decisions, it is not consistently used. For example, in December 2000, the State awarded a contract for security guards services at various agencies in New York State. The vendor awarded the contract, however, had been previously found non-responsible by a New York City agency. In addition, the vendor had also been found to be in violation of the General Business Law for using unlicensed guards. Had the proposed electronic centralized repository been in place, this information would have been readily available to the State as it made its responsibility determination prior to awarding the contract.

Also in 2000, another contract for guard services was awarded to a vendor which had numerous liens and judgments against it. For this reason, a New York City agency had withdrawn a contract from this vendor in 1998. Upon discovery of this information, the State terminated the contract in 2001, and the Office of the State Comptroller withheld numerous payments from the vendor to forward to the Internal Revenue Service and the New York State Department of Taxation and Finance.

¹² Mayor's Office of Contract Services. "Contractor Responsibility." <<http://www.ci.nyc.ny.us/html/moc/html/contractor.html#vendex2>>.

¹³ The Mayor's Office of Contracts concurred with most of the audit findings and stated that the recommendations were consistent with the internal goals that the VENDEX unit had set for itself.

Situations have also occurred in the past in which a State contract has been awarded to vendors debarred by New York City for falsifying payrolls, or found to be non-responsible by a New York City agency for deceptive business practices or failure to disclose information. Such situations, however, could be avoided once this type of information is easily accessible. The ability to access this information would also preclude extensive investigative work by the contracting entity conducting its responsibility determinations, as well as by the Office of the State Comptroller in its responsibility determination reviews.

Whether non-responsible determinations by New York City agencies involve bid-rigging or poor performance on past contracts, an interface between VENDEX and the proposed State system would provide information to the State contracting entity to help ensure taxpayer dollars are awarded in a prudent manner. While findings of non-responsibility by one agency will not automatically translate into a finding of non-responsibility by another agency, the contracting entity needs to be aware of all the information as it determines whether the scope of work under the pending contract involves the same issues. Awareness of issues also creates the opportunity to build safeguards into contract terms. A shared computerized system would provide this ability.

State contracts have often been awarded to a particular vendor prior to a non-responsibility determination made by a New York City agency. In these cases, of course, the information would not be available to the contracting entity during the course of its review. The shared computerized system, however, could alert State contracting entities of subsequent developments regarding a vendor already under contract. This would allow contracting entities to proactively address potential, similar issues and would provide the tools for State agencies to ensure that public dollars are accounted for and to safeguard the public trust.

Section
4

Enhancements to Vendor Responsibility Determinations by State Agencies

Early in Comptroller Hevesi's tenure, the Office of the State Comptroller began to lay the framework for a shared vendor responsibility database system. Since that time, a Vendor Responsibility Team has been established within the Comptroller's Office to solicit and utilize input from procurement staff in State agencies, as well as from the business community, to develop such a system.

A Contracts Bureau staffing plan was presented and approved in early 2005 by both the Department of Civil Service and Division of the Budget to provide positions in support of the vendor responsibility initiative. The staffing plan specified, "To provide training and technical assistance to agencies in vendor responsibility issues and undertake the required review of the proposed contractor's responsibility, a new team will be created: the Vendor Responsibility Team." The Contract Management Specialist (CMS) positions established under the plan have been almost completely filled. Only two CMS 1 positions, out of a total of 23 positions, have not yet been filled. The information technology positions were approved only recently, and the Office of the State Comptroller has initiated the process of requesting waivers to fill the positions.

The initial focus of the Comptroller's initiative was to ensure that agencies understand vendor responsibility, as well as the pertinent physical

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documents and documentation that must be included in the procurement record.¹⁴ Comptroller's Office staff conducted a review of previous vendor responsibility determinations by pulling a random sample of procurement records submitted by various State agencies. This review revealed that vendors were forced to use a wide variety of forms and the level of detail involved in each review was inconsistent from one agency to the next.

As a result, the Office of the State Comptroller devised strategies to move toward a standardization of responsibility determinations by issuing a standard vendor responsibility questionnaire and standard format for agencies to provide information in the procurement record. In addition, Comptroller's Office staff conducted extensive outreach to both vendor and State agency representatives. A common, united approach to determining responsibility is a critical step toward a shared, computerized system.

The Vendor Responsibility Team has assisted 51 agencies in response to formal requests for technical assistance, and provided vendor responsibility information to over 300 agency and business representatives. Unlike State agency contracts, with few exceptions, public authority contracts are not subject to approval by the State Comptroller before they become effective. The two major public authorities whose contracts are subject to pre-approval are the Long Island Power Authority (LIPA) and the Thruway Authority. Public authority contracts that are submitted to the Office of the State Comptroller for approval are subject to the same process by which State agency contracts are reviewed.¹⁵

Since launching the Vendor Responsibility Initiative, the Office of the State Comptroller has found one proposed contractor to be non-responsible and returned that contract unapproved to the Thruway Authority.¹⁶ Numerous other contracts have been returned to agencies for additional work regarding responsibility determinations. More commonly, the Office of the State Comptroller's auditors have provided technical assistance to contracting agencies to enhance the review process and improve documentation of the actions taken.

¹⁴ The contracting agency is required by Section 163 of the State Finance Law to document all decisions made in procuring for the State. The documentation, including supporting materials for the decisions made, comprise the procurement record, which must be submitted along with any contract sent for review to the State Comptroller.

¹⁵ See the Comptroller's February 2006 report, *Public Authority Contracting Practices*, for further information.

¹⁶ A \$46 million contract for construction of an interchange between Interstates 87 and 84 near Newburgh was returned unapproved to the Thruway Authority in November 2005.

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Also as part of its initiative to enhance vendor responsibility, the Office of the State Comptroller provides assistance, when requested, to agencies concerning responsibility determinations. The Vendor Responsibility Team, for example, assisted the Developmental Disabilities Services Office (DDSO), which is part of the Office of Mental Retardation and Developmental Disabilities, throughout the vendor responsibility process in 2005 as the agency attempted to address a vendor's past performance issues. A meeting was held between the agency and the vendor in July 2005 to discuss housekeeping issues and difficulties at the facility. Since the agency had held meetings with the vendor prior to July, a six-week time frame was given to the vendor in order to address the problems through a performance plan. In a follow-up meeting in August, the agency determined that the vendor had made some performance improvements, but they were not sufficient to meet the required housekeeping standards. The Office of the State Comptroller provided technical assistance, as requested, on how to conduct due process for the vendor. As a result, the agency determined the vendor to be non-responsible due to past performance, and the Office of the State Comptroller supported the determination.

In another case, the Vendor Responsibility Team advised Stony Brook Hospital of the financial condition of a vendor providing mobile PET scanning services. Detailed review by the Comptroller's office staff revealed the company's stock performance had declined by 90 percent over the previous year. The vendor was experiencing severe financial stress and was at risk of losing the leased equipment required to fulfill the terms of the contract. Since Stony Brook had been unable to confirm the financial condition of this vendor, the assistance provided by the Comptroller's Office allowed the contracting agency to prepare for a potential emergency need should the vendor become unable to provide the services. In addition, Stony Brook was able to re-bid the contract sooner than expected.

To date, the Vendor Responsibility Team has reviewed vendor responsibility determinations for some 17,000 contracts submitted to the Office of the State Comptroller for approval. For approximately 5,000 of these contracts, the Vendor Responsibility Team has performed a more detailed review of the agency's documentation and vendor responsibility determination.

Affirmative Responsibility Review

As part of Comptroller Hevesi's multi-phase plan to improve the quality and consistency of responsibility determinations by State agencies, contracts submitted to the Comptroller's Office for approval now must include an

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affirmative declaration that the vendor has been determined to be responsible. In addition, the Comptroller's Office has begun to ask questions about specific information used to make the determination and provide resources to assist agencies in determining vendor responsibility.

Sound procurement practice dictates that agencies take reasonable steps, which are documented in public procurement records, to ensure that public contracts are awarded to vendors that are most likely to be capable of fully performing their contractual obligations over the term of a contract. Responsibility reviews also help ensure that public dollars support honest vendors who compete on product and price, and protect the competitive contractor selection process from unfair competition. Full, fair and open competition produces better value for the State and its citizens.

Responsibility determinations are made on a case-by-case basis and consider the following:

1. Is the contractor financially and organizationally capable of performing the contract?
2. Is the contractor legally capable of performing the contract?
3. Does the contractor possess the integrity to perform the contract?
4. Has the contractor performed at acceptable levels on other governmental contracts?

In November 2004, the Office of the State Comptroller released a procurement bulletin on vendor responsibility to promote a uniform approach to agency determinations.¹⁷ Comptroller's Office staff simultaneously began to conduct training and outreach for agency staff, and worked to develop a model vendor questionnaire to achieve conformity in the types of information gathered to make responsibility determinations.

Bulletin G-221, "Vendor Responsibility: Standards, Procedures, and Documentation Requirements," issued in November 2004, applies to every contract, contract assignment and purchase order.¹⁸ Specifically, Bulletin G-221 requires agencies to:

¹⁷ See Appendix A for Bulletin G-221. "Vendor Responsibility: Standards, Procedures, and Documentation Requirements." November 1, 2004.
<<http://www.osc.state.ny.us/agencies/gbull/g221.htm>>.

¹⁸ A contract assignment is a formal agreement in which one vendor assigns the rights and responsibilities for contract performance and payment to another vendor who accepts those rights and responsibilities as outlined in the contract. Contract assignments are often entered into due to

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1. Consider any information that has come to their attention that would raise issues concerning the proposed contractor's responsibility.
2. Require disclosure by the proposed contractor of all information the agency reasonably deems relevant to a determination of responsibility in the case of any contract valued at \$100,000 or more. If a vendor responsibility questionnaire is required, it must be included in the procurement record.¹⁹
3. Include, in the procurement record, certification that the agency has reasonable assurances the contractor is responsible and documentation of the basis for the determination.
4. Notify a contractor, in writing, of a preliminary determination of non-responsibility, detailing the exact reasons for such preliminary determination and providing the contractor with the opportunity to be heard on the matter. Provisions may also be made for the agency to hold a hearing and for the contractor to file an appeal. Documentation of the basis for a non-responsibility determination must be included in the procurement record if a contract is subsequently awarded to a different bidder.²⁰

Beginning in January 2005, the certification affirming the vendor's responsibility was included as part of the Vendor Responsibility Profile. Prior to that, agencies were required to conduct responsibility determinations, but agency efforts to assess the responsibility of the vendor were not documented in the procurement record. Although compliance with the new requirement was not fully achieved in the early months, all agencies are now in compliance and an affirmative review of the responsibility of any vendor to whom they propose to make a contract award is conducted.

Contracting Agency Responsibilities

Four steps are incumbent upon the contracting agency to provide assurance that a vendor is responsible:

financing arrangements, to fulfill liabilities to subcontractors, or due to a structural change on the part of the contractor.

¹⁹ An agency may choose to require a vendor responsibility questionnaire for contracts valued at less than \$100,000.

²⁰ See Appendix A for Bulletin G-221.

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- Collect information,
- Review and analyze information,
- Address responsibility issues, and
- Determine responsibility.

The following information may be collected in the first phase of a responsibility determination:

- Procurement solicitation documents,
- Performance reports, site visits, meeting notes and audits,
- Vendor disclosure if applicable, which is often provided through a questionnaire, and
- Independent resources.

In the review and analysis, the contracting agency is required to conduct an affirmative review and consider all information that has come to its attention. A case by case, risk-based review must be made as the following is analyzed for the vendor:

- Financial and organizational capacity,
- Legal capacity,
- Integrity, and
- Performance.

For contracts equal to or greater than \$100,000, vendor self-disclosure (usually in the form of a vendor questionnaire) must also be considered. However, a contracting agency may choose to require vendor disclosure for contracts of lesser value.

The agency must exercise due diligence by confirming information, following up with the vendor and analyzing the vendor's performance record to provide reasonable assurances that the vendor is responsible. The agency needs to make a judgment in addressing responsibility issues. For example, a particular issue may or may not be significant and relevant in the award of certain contracts. Or, the vendor may have already remediated the issue. Sometimes an issue can be resolved by consulting with the vendor, and in certain cases, an issue may be addressed in the contract. Although these guidelines regarding responsibility issues are helpful, contracting agencies may address other issues as well. In exercising due diligence, the contracting agency should investigate all potential issues during its responsibility determination and resolve them in a proactive manner.

If after the initial review, a determination of non-responsibility is made, due process must be afforded to the vendor. The vendor must be informed of the agency determination, including written notification regarding information suggesting the proposed contractor may be non-responsible. The contracting agency must provide the vendor with a reasonable opportunity to provide a written response to the issues. The agency must promptly review both the response and any corrective actions undertaken by the vendor. The agency determines whether a meeting or hearing is necessary and, if so, conducts it. The agency should involve its legal staff in the process to make its final responsibility determination regarding the proposed contractor. The agency also must document all findings and actions in the Vendor Responsibility Profile submitted to the Office of the State Comptroller with the procurement record.

Required Documentation

Currently, approval of contracts by the Office of the State Comptroller requires that the procurement record include the following:

- Vendor Responsibility Profile,
- Agency Certification, and
- Vendor Disclosure, which usually takes the form of a questionnaire for contracts valued at \$100,000 or more. An agency may elect to require a questionnaire for contracts of lesser value.²¹

The Vendor Responsibility Profile provides a detailed summary of all information gathered on a vendor, including the investigation made by the contracting agency and documents. The Profile includes:

1. A determination of vendor responsibility by the agency,
2. The process used to assess responsibility,
3. Any potential issues found,
4. Any vendor actions taken in an attempt to address the identified issues, and
5. Any agency actions taken to mitigate the risk associated with the identified issues, in the event the vendor is determined to be responsible.

The Vendor Responsibility Profile also identifies the contracting agency, whether the vendor is the prime contractor or a subcontractor and the contract amount, and includes a description of the contract. On the same

²¹ All documents were updated in June 2005, and the questionnaire continues to be revised with input from State agencies and the business community.

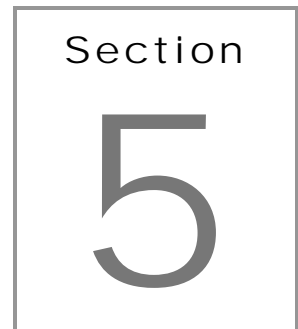
ENHANCEMENTS TO VENDOR
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STATE AGENCIES

form, the contracting agency must also certify that it has undertaken an affirmative review of the proposed contractor's responsibility.

The Vendor Responsibility Profile, the Agency Certification and the Vendor Responsibility Questionnaire are required for all new contracts and contract amendments with the general exception of:

- Intergovernmental contracts (e.g. contracts between State agencies, authorities and research foundations),
- Contracts with cities, counties, towns, villages and school districts,
- Contracts with public colleges and universities,
- Changes provided for in the original contract, such as renewals and construct change orders, and
- Purchase orders pursuant to backdrop contracts.

These requirements foster a fair, open and competitive procurement process and help to ensure that public contracts are only awarded to vendors who are found to be responsible. Furthermore, the requirements ultimately provide greater accountability of taxpayer dollars and help to safeguard the public trust.



Questioning Inadequate Responsibility Determinations

In February 2004, results of an investigation by the Office of the State Comptroller showed that the New York State Office of General Services (OGS) awarded 73 construction contracts worth more than \$7 million to two Brooklyn-based companies headed by an individual who was barred from doing work with the federal government because of allegations that he attempted to bribe federal inspectors.²²

OGS officials, who awarded these contracts based on false information provided by the contractor, suspended the companies and the owner from further business with OGS following the investigation. OGS also undertook a review of procedures utilized to award emergency contracts and accepted the Comptroller's recommendation to initiate a review of the practices and procedures used to make responsibility determinations to prevent similar incidents in the future.²³

The vendor in this case had been placed on the federal Excluded Parties List System (EPLS) in 2001.²⁴ Had the proposed State electronic system been available, an interface with the EPLS would have made the vendor's scandalous history readily available to the contracting agency as it was conducting its responsibility determination.

²² The New York State Office of General Services acts as the central procuring agency for the State, negotiating contracts for significant quantities in an effort to leverage the State's buying power. It also manages State facilities.

²³ An audit of OGS emergency contracting practices (2004-S-90), issued January 17, 2006, found that OGS controls over contractor selection and vendor responsibility, ensuring performance of only the work related to the emergency and contractor monitoring, still need improvement.

²⁴ The Excluded Parties List System (EPLS) is an electronic, web-based system that identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits.

QUESTIONING INADEQUATE
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In December 2005, the Office of the State Comptroller returned a contract to OGS with a request that the agency conduct a more thorough review of the vendor. The contracting agency had not considered potentially adverse information the vendor had previously disclosed in a questionnaire in the areas of liens or judgments against the entity, ongoing investigation by a government entity, and misdemeanor convictions or violations of administrative, statutory or regulatory provisions.²⁵ In this case, more complete and accurate disclosure has resulted in resolution of the issues and the Comptroller's Office supports the agency's determination that the vendor is responsible.

As this example indicates, reviews by the Office the State Comptroller often result in a return of the contract to the procuring agency with a request that it investigate the vendor further and better document the basis for determination. Some findings by the Office of the State Comptroller, however, demand return of the contract unapproved.

In November 2005, a review by the Office of the State Comptroller determined that a vendor selected to receive a \$46 million Thruway Authority contract for construction of the interchange between Interstates 87 and 84 near Newburgh in Orange County was a "non-responsible" bidder. Following an extensive review of materials supplied by the Thruway Authority, as well as independent research by Office of the State Comptroller investigators and contract auditors, the Comptroller's Office identified serious concerns about the construction firm and returned the contract unapproved. While some of the concerns identified by the Office of the State Comptroller were already known to the Thruway Authority, others were not. Upon review of the information, Authority officials agreed the contract should not be approved.

At the same time the Office of the State Comptroller and the Thruway Authority determined that the contract should not be awarded to the vendor in question, a commitment was made to work together to quickly select a responsible bidder to complete the important project.

Shortly thereafter, the vendor identified as non-responsible initiated legal action challenging the Comptroller's determination and also requesting a preliminary injunction to prevent the award of the contract to another vendor. On December 21, 2005, the State Supreme Court Judge assigned to this case determined that he would not grant a preliminary injunction,

²⁵ Letter from Office of the State Comptroller Director of Contracts John G. Moriarty to Bruce Hallenbeck, Assistant Director, Procurement Services Group, Office of General Services. December 20, 2005.

thus permitting the Thruway Authority to proceed with the award of the contract to another vendor.

The decision by the New York State Supreme Court, dated January 20, 2006, stated that the Comptroller “did not act in excess of his legal authority and jurisdiction when he determined that [the vendor] was not a responsible bidder.” The Court also held that “the Comptroller’s determination finding that [the vendor] is not a responsible bidder/vendor was rationally based upon the extensive investigation conducted by the Thruway Authority and by the Comptroller’s Office.”²⁶

The Office of the State Comptroller also conducted a more detailed investigation regarding a lease agreement it returned to a contracting agency for additional responsibility review. The Comptroller’s investigation revealed that the Tax Commissioner had revoked the corporation status of a related business entity due to an unsatisfied State tax warrant. The Comptroller’s independent review also revealed an ironic, but relevant, twist: the New York State Taxation and Finance Office that occupies the space leased under this agreement is the district office charged with collecting this vendor’s past due tax liability.

The Comptroller’s Vendor Responsibility Team conducted a more detailed review of a responsibility determination made by the Manhattan Psychiatric Center in the fall of 2005. In this case, a potential relationship between the vendor under review and a vendor previously dissolved by proclamation by the Department of State for failure to file tax returns, as well as having bankruptcies, Department of Labor warrants, and New York State tax liens was raised. A more thorough investigation by the Office of the State Comptroller revealed that the vendor under review was not even located at the address given by the vendor. Subsequently, the Comptroller’s Office returned the contract non-approved, with the vendor deemed non-responsive. Investigations regarding the vendor are still underway.

The review process established through the Comptroller’s Vendor Responsibility Initiative has forced vendors to divulge tax liens, while the Vendor Responsibility Team’s review of lien data has assured the vendors’ disclosure is truthful. Through this process, the Office of the State Comptroller has forced vendors to pay delinquent taxes before a contract is approved. An interface between the shared, computerized system currently under development and the New York State Department of Taxation and Finance will help ensure that tax liens are resolved by vendors before they are awarded State contracts.

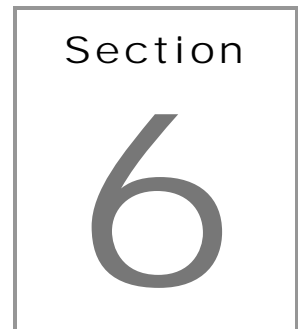
²⁶ *Worth Construction Co., Inc. v. Alan G. Hevesi, as Comptroller of the State of New York, and the New York State Thruway Authority*, 807 N.Y.S.2d 558 (Sup Ct. Albany County 2006).

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Through a more detailed review of a contract in the Attorney General's Office, the Vendor Responsibility Team revealed an open sales tax warrant for over \$1 million. In this case, the vendor had sold a business and paid the tax for which he was responsible. Additional investigation revealed that all outstanding issues had been resolved by this vendor, and the tax liability had been incurred by a different vendor. As a result, this contract could be released following the more complete disclosure.

The Comptroller's requirement for vendor disclosure, often through a questionnaire, has revealed financial problems for potential grant recipients. Not only have issues been raised regarding the financial viability of the charities, but their ability to legally solicit funds under New York State law and their ability to provide the services under the grant has been called into question. The Office of Children and Family Services (OCFS) determined that one vendor, in addition to holding a significant level of debt and being delinquent in Charities registration, had also failed to provide appropriate program services for the Erie County Department of Social Services. Another vendor, also delinquent in its Charities registration, was subject to a lien by the U.S. Department of Treasury for failure to pay payroll taxes and to an open New York State Department of Labor warrant. This vendor had also failed to pay payroll taxes in the State and submit progress and annual reports. In both cases, the Office of the State Comptroller upheld OCFS's 2006 determinations of non-responsibility.

Although grant recipients for program services provide critical support for more vulnerable populations in society, it is far better to find a charity non-responsible before a grant is awarded. The alternative is that a charity relied on for program services might collapse, leaving a client population without the services and wasting public dollars. The interfaces envisioned for the New York State Vendor Responsibility System would help ensure that grants are awarded to recipients who not only have the integrity, but are also financially and legally capable of fully performing the terms of the contract.



Building a Shared Vendor Responsibility System

Since announcing plans in 2005 to develop a shared vendor responsibility system, Comptroller's Office staff has collaborated with State agency and vendor representatives to design a system that will benefit all participants in the vendor responsibility review process. The goal is to improve efficiency and effectiveness for vendor, agency and Office of the State Comptroller processes.²⁷

Solicitation of Input

Comptroller's Office staff developed surveys to obtain broad-based input on the system initiative, which were distributed in May 2005.

The Office of the State Comptroller surveyed 118 State agencies and associated entities to gauge reaction to the proposed centralized electronic repository, which is aimed at creating efficiencies for both contracting agencies and potential contractors. Sixty-two contracting agencies, representing nearly 73 percent of all contract transactions received by the Comptroller in State fiscal year 2004, responded to the survey on the repository.²⁸ The purpose of the repository is to reduce redundant paper filings and provide more accurate and timely information for rendering vendor responsibility determinations.

Through the survey, Comptroller's Office staff asked State contracting agencies for input on a secure, web-based system that might include vendor-entered and maintained disclosure documents, responsibility-related

²⁷ See Appendix B for a list of the outreach sessions conducted by the Office of the State Comptroller.

²⁸ See Appendix C for the survey distributed to State agencies.

information from State regulatory agencies, vendor responsibility issues and/or determinations, and other capabilities. The Office of the State Comptroller invited comments on priorities for each, the impact of such a system on current agency practices, additional capabilities that might be desirable, and the concerns that should be addressed in establishing such a system. The comments and concerns raised in the surveys are being addressed during the system's development phase.

- The anticipated benefits most frequently cited by the agencies surveyed were time and cost-savings as a result of reduced paperwork and duplication. Agencies indicated they want to view what other agencies considered in responsibility determinations.
- The concern most frequently cited by the agencies was that the system would contain inaccurate or outdated information due to vendor delays, system overload or other factors.
- The most common recommendation for related system capabilities was to integrate vendor responsibility with other vendor certification requirements in a single system, where information is entered once and is available in one place.

Also, in May 2005, the Office of the State Comptroller randomly selected vendors to receive a survey in order to obtain broad-based input on the system initiative and gauge vendor reaction to the proposed system. Of the 847 vendors surveyed, 123 responded, which represents a 15 percent response rate. A broad cross-section of contractor types, however, was represented in the vendor responses.²⁹

- Like the agencies, the vendors most frequently cited time and cost-savings as an anticipated benefit as a result of reduced paperwork and duplication. Vendors indicated they want to submit information online and many comments reflected the desire to simplify reporting.
 - Greater speed and flexibility,
 - Ease of use and speed to update information,
 - One-time data input for vendors,
 - Vendor data in a single repository,
 - Improved communication with State agencies,
 - Single access point for agency information,
 - Increased transparency,
 - Savings to the State in time, money and access to reliable data,
 - Improved competition, and

²⁹ See Appendix D for the survey distributed to vendors.

- A more streamlined process and methodology of doing business with New York State.
- The concern most frequently cited by the vendors related to the security and privacy of the information.
- One commonly cited recommendation was to integrate vendor responsibility with other vendor disclosures and certification requirements in a single system accepted by all agencies so that all information is entered once and is available in one place. The other most commonly cited recommendation was to create a means to attach related documents within the system.

Common Questionnaire

Currently, agencies employ different documents to collect information from vendors that is necessary to determine responsibility. The Office of General Services (OGS) offers a model vendor responsibility questionnaire and the New York State Council of Contracting Agencies has developed one geared, primarily, toward construction contracts.

At the time it issued Bulletin G-221 in November 2004, the Office of the State Comptroller also offered a model questionnaire in an effort to facilitate compliance with the requirements of the bulletin. It is a six-page form that can be utilized to capture the following:

- A vendor's Workers' Compensation insurance carrier information,
- The principal owners and officers of a vendor,
- Any other business name or federal employer identification number used in the past ten years by the vendor,
- Individuals serving in a managerial or consulting capacity who have served as a public official, full or part-time State agency employee or consultant, or officer of any political party in New York State,
- Information related to a vendor's integrity, and
- Information related to a vendor's financial capability.

The model vendor responsibility questionnaire also asks a series of questions concerning suspension, debarment, or termination relating to a contract with any level of government. The business conduct of the vendor, as well as the vendor's compliance with various State and federal regulations, is also reviewed, and the vendor must detail any type of material weakness in its system of internal controls revealed in the past three years by government audits and any bankruptcy proceedings within the past seven years. The questionnaire also requires the vendor to indicate whether it contracted or subcontracted with any State agency

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within the past five years and whether the vendor or its affiliates experienced any negative action (e.g. default on any public or private contract, or unsatisfactory performance assessment by any government agency) during the same time period.

Providing the model questionnaire was an early step toward moving all contracting agencies to use the same approach in making responsibility determinations. OGS collaborated with the Office of the State Comptroller throughout this process, revisiting its own 1999 procurement guidelines pertaining to vendor responsibility and revising them for consistency.

The Office of the State Comptroller has been working with a work group of State agencies and vendors to develop a standardized questionnaire that will form the basis for the online questionnaire. The question set currently under development with State agencies will promote even greater standardization in the information that is gathered directly from vendors once it is finalized. It also will create a more efficient system through which vendors submit information that may be required multiple times for the vendor seeking business with more than one contracting agency.

In this effort to take the multiple questionnaires that are currently used and get all participants to one question set, Comptroller's Office staff met with 19 agencies. The Office of the State Comptroller, while valuing consistency in the type of information collected, recognizes that different questionnaires are needed to accommodate different types of contractors.

After reviewing the existing set of questionnaires and developing an initial question set, a question by question analysis was conducted with the group to determine whether any adjustments should be made to the questions and whether any questions should be added to the set. This completed the question set focusing on for-profit vendors. The same process was used to develop a question set for not-for-profit vendors.

Question sets for both the construction vendors and multinational corporations are now under development. Each question set must provide useful information for contracting entities to assess vendor responsibility, be understandable to vendors, and create alternative processes to deal with rare and unusual situations. The New York State Council of Contracting Agencies recently agreed to work with the Office of the State Comptroller on the development of the construction question set.

The New York State Council of Contracting Agencies was established by Executive Order 125 in 1989. The Council is charged with establishing procedures to ensure the systematic collection and timely exchange of information relevant to agency determinations of responsibility and reliability

of bidders for contracts covered by Article 8 or 9 of the Labor Law, and developing a uniform questionnaire for use by contracting agencies. The Council of Contracting Agencies has had a standard questionnaire for several years. However, that questionnaire failed to provide the Thruway Authority with information that eventually resulted in the 2005 determination that Worth Construction was non-responsible.

The goal is to post a final draft of all question sets to the State Comptroller's website in April and invite written comments.

The final Vendor Responsibility Questionnaire will consist of standard question sets that are both intelligent and dynamic. Vendors will enter basic identifying information, which will then determine the questions they will be required to answer. For vendors entering a not-for-profit status, for example, the system will automatically display the questions pertaining only to not-for-profits. Likewise, the system will automatically shift for-profit vendors, construction companies and multinational companies to the appropriate question set. This will eliminate non-applicable questions for each type of vendor.

Responses to some questions will lead to a particular series of questions, and options will be built in to allow a vendor to navigate to a particular section. Although the Questionnaire will be updated by the vendor, a contracting agency will indicate to the vendor whether it requires a more recent update and certification of this vendor disclosure document for a particular procurement. It is possible that when a vendor submits a bid, he or she will be able to include a line affirming that the certification is still accurate.

System Design

Work sessions were held from June through August 2005 to define the overall scope and high level design of a shared vendor responsibility system. These joint application development (JAD) sessions included State agency and vendor representatives. The benefits, issues of concern and recommendations cited in the surveys were included in the discussions.³⁰

In addition to participants from the vendor community, agency work group participants include, but are not limited to, representatives of:

- New York State Assembly,
- New York State Senate,

³⁰ See Appendices E and F for the agencies and vendors represented at the Joint Application Development sessions and Question Set meetings.

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- New York State Attorney General,
- Office of Children and Family Services,
- Department of Correctional Services,
- Office of Court Administration,
- State Education Department,
- Department of Environmental Conservation,
- Office of General Services,
- Department of Labor,
- Department of Transportation, and
- State University of New York.

Based on the high-level requirements, the Office of the State Comptroller has defined the detailed requirements of the system incorporating concerns expressed by both agencies and vendors. Security concerns were high for both groups. The enrollment process has been designed whereby the initial vendor user for an organization (primary authorizer) will submit a notarized authorization form. In addition, the legal business entity will be validated with the Internal Revenue Service. This will ensure that the organization enrolling is a legal entity and that the individual enrolling the organization is authorized and is who he or she claims to be. The New York State Trust Model requirements have been incorporated in the enrollment process. All data submitted will be transmitted over Secure Socket Layer (SSL).

All users will have a user ID and password that must be used each time the system is accessed. The Office of the State Comptroller has acquired hardware and established a plan for redundancy to provide back-up in the case of a failure. Users will be able to call or email the help desk or access online help when they need assistance. Vendors also will be able to generate their responses in a printer-friendly format that will allow them to have an electronic and hard copy version of their responses.

Once a vendor organization and the primary authorizer have been validated, multiple users can be added to the system for that organization. Each user can have one or more roles. For example, a number of people can be authorized to enter data, certify a question set or view the vendor's data within the organization. The system will allow more than one individual to work on a question set at the same time. For example, one person in the company may answer financial questions as another is answering compliance questions.

The question set will be divided into sections to allow for easier navigation. A vendor will be able to view whether a section is complete and open that section directly from a central page without having to navigate through all the questions. Responses to some questions will open other questions based on the value of the response. If the response to a question can be

addressed with a pre-existing document, the document can be uploaded. A vendor will be able to save the information entered without answering all the questions and return at a later time to complete the questions. The vendor's responses must be complete when the primary authorizer attempts to certify the responses. The response set will only be available to State agencies when the certification is complete. If an agency would like a response set updated, it can request a vendor to log on and update the company's responses and certification. The vendor will not be required to enter the responses again. It is possible that when a vendor submits a bid, he or she will be able to include a line affirming that the certification is still accurate. Electronic signature requirements for the certifier will be verified in a separate process.

The system will also be accessible by agency authorized users for all procurements. During the first phase of the system, agencies will be able to view the vendor's responses. Agencies also may choose to be notified when selected vendors certify a new response.

The initial release of the system, which will allow vendors to complete their question sets online and provide agencies access to this information, is targeted for the 2006 calendar year. In the second phase of the system, State agencies will be able to submit their vendor responsibility review documentation online. Interfaces to other data sources will also be added, such as the ability of State agency users to submit their vendor profiles online and to view issues identified in other responsibility determinations and verified as accurate, and the ability to validate vendor data.

Access to Other Sources of Information

During the fact gathering phase of this project, potential agency users in particular expressed an interest in being able to access other sources of information about vendors. Specific information on vendors is already filed with a number of governmental agencies, such as, at the State level, the Attorney General's Office and the Department of Labor.

Under the New York State Labor Law, when two final determinations have been rendered against a contractor or subcontractor, determining that such contractor or subcontractor has willfully failed to pay the prevailing wage and/or supplements, or one final determination involves falsification of payroll records or kickbacks of wages, the vendor is placed on a list that bars it from entering into any contract for public work. While this list only prohibits vendors from entering into contracts for public work, contracting entities should consider the circumstances when determining vendor

responsibility for any contract. Issues involving falsified records or kickbacks would be relevant in considering all contract awards.

While a number of situations in the past involved a debarment occurring after a vendor was already determined responsible and was under contract, the shared computerized system could alert the State contracting entity of subsequent developments regarding a particular vendor. Steps could then be taken as necessary to terminate the contract or adopt safeguards in reporting and monitoring to protect taxpayer dollars.

Currently, contracting agencies must solicit information from all relevant sources of information individually. This can be a time-consuming process. As part of the long range goal of system development, interfaces will be developed to cross reference the following:

- Responsibility determinations by the vendor responsibility information exchange system (VENDEX) in New York City. VENDEX provides background information from vendors who bid on all New York City contracts and subcontracts valued at \$100,000 or more, sole source contracts valued at \$10,000 or more, and/or whose aggregate business with the City in the preceding 12 months totals \$100,000 or more,³¹
- The Excluded Parties List System (EPLS), which is an electronic, web-based system that identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits,
- Charities registration with the Attorney General's Office,
- Liens with the Department of Taxation and Finance,
- Issues surrounding the prevailing wage requirement resulting in debarment by the Department of Labor,
- Information about debarment pursuant to procurement lobbying provisions of law.
- Outstanding issues with the Department of Environmental Conservation,
- Professional licensing information with the State Education Department,
- All State contract work for the particular vendor, and

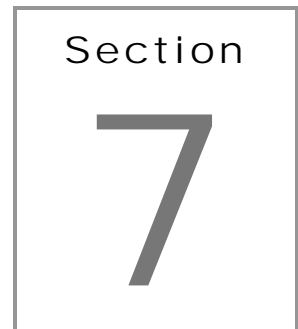
³¹ In a sole or single source procurement, only one vendor can supply the commodities, technology and/or perform the services sought by the agency.

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- Performance information from other State agencies on current and prior contracts with the particular vendor.

Information maintained by the federal Occupational Safety and Health Administration (OSHA) is an additional potential interface.

Once automated, a shared system will provide information on a vendor from myriad sources. It will not only lessen the chance that information useful in determining responsibility is missed, but it also will streamline the investigative work that is incumbent upon the contracting agency to conduct in the effort to determine responsibility. For a vendor, it will greatly reduce the duplication of work that is now required when submitting bid proposals to more than one State agency.



Indications of Support for a State Vendor Responsibility System

Various legislative proposals have been advanced to enhance responsibility determinations by State agencies, including an Assembly proposal for the development of a Responsible Bidders Database. Introduced as A.1080 in 2005, the bill sponsored by Assembly Member RoAnn Destito directs the State Comptroller to establish and maintain a computerized database system that contains information for every contract for State agencies and public authorities. Further, it provides that the Comptroller may enter into cooperative agreements for the exchange of information with any municipality with a similar database.

Such legislation is not necessary for the development of a system as currently envisioned by the Office of the State Comptroller.

Following a series of reports about the award of public contracts to firms with ties to organized crime, an editorial in the *New York Daily News* called upon the Comptroller to develop a system at the State level comparable to the Vendor Information Exchange System (VENDEX) in New York City. The editorial read, in part:

*The city has a local Vendex system up and running, and by all accounts it's working most efficiently. It's up to state Controller [sic] Alan Hevesi's office to start pushing hard for Vendex at the Albany level. Surely no one could object to such attentiveness to the taxpayer's dollar.*³²

The Comptroller's initiative to develop a vendor responsibility system was underway prior to the *Daily News* series, but had not been publicly

³² "Drive The Mob Off The Road." Editorial. *New York Daily News*. September 27, 2005.

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announced in recognition of the time necessary to secure input from involved parties and develop an effective system.

A similar investigative report published by *Newsday* in 1997 also illustrated the need for a shared system to determine responsibility. The *Newsday* investigation reviewed contracts awarded over a ten-year period by the State Dormitory Authority and City University of New York. This investigation found that millions of dollars in contracts were given to firms banned by other public agencies because of criminal ties or other violations. *Newsday* discovered firms had received contracts even though other agencies had previously denied them work, indictments had been filed or convictions had been handed down. Contracts were even awarded to one firm whose president was a convicted felon.

The Executive Budget presented by the Governor in January 2006 included a provision for the establishment of an 11-member Advisory Council on Vendor Responsibility Database. The proposal designated the Office of General Services Commissioner to serve as Chair and a representative of the Office of the State Comptroller to serve as Vice-Chair. Other appointees would represent:

- The Office of the State Attorney General,
- Division of the Budget,
- Office for Technology,
- Department of Transportation,
- Local Government (appointed by the Governor),
- Contracting Community (appointed by the Governor),
- State Senate,
- State Assembly, and
- Chief Judge of the Court of Appeals.

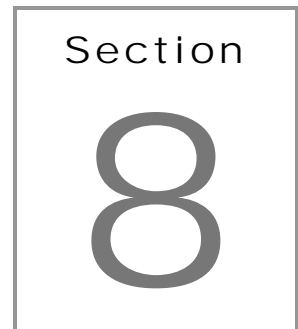
The Council is intended to study and make recommendations to the Governor and Legislature by January 1, 2007 about advisability of a central repository for information related to vendor responsibility. The language establishing the Council directs it to consider, at least:

- Data to be collected,
- Relevance to type and value of procurement,
- How often information is to be collected,
- How information is to be accessed and disseminated by agencies and vendor community,
- How to protect proprietary information,
- Due process, and
- Disposition and destruction of old data.

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Further, the legislation requires all State agencies to cooperate with the effort to develop a system and provides for consultation with the vendor community.

While it is beneficial that the Executive has expressed an interest in this issue, establishment of an Advisory Council at this time would thwart momentum toward the development of a system. The Office of the State Comptroller has consulted with the various parties envisioned to serve on or advise the Council and intends to continue to do so in going forward with this important initiative. In addition, the Office of the State Comptroller has established that legislation is not necessary for the development of a central repository.



Time Line

The Office of the State Comptroller continues to work on establishing a shared system. As with any iterative system development effort, as detailed design and development proceed, requirements will be refined and issues that may arise will be addressed with input from stakeholders. The goal is to roll out the first phase of the computerized system within the 2006 calendar year.

As a result of the collaborative approach in which the Office of the State Comptroller has sought and utilized input from procurement staff in State agencies and from the business community, Phase I of the shared system will include enrollment for State agency, vendor and Office of the State Comptroller users. Phase I will also provide vendors with the ability to enter responses to the Vendor Responsibility Questionnaire online and to upload attachments as necessary to provide additional information. For State agencies, Phase I will allow users to view a vendor's responses to the Questionnaire online. The initial interfaces in Phase I will display data related to the vendor or validate data the vendor has entered.

As the development effort among stakeholders continues, additional interfaces will become functional in Phase II. This phase will also provide agency users with the ability to submit online their Vendor Profiles, which consist of the agency's responsibility determination, a description of the determination process and issues that were uncovered during the agency's review. Following review of this information by Comptroller's Office staff, issues determined to be accurate and factually based will be available for other State agencies to view. Interfaces to other systems will continue to allow online verification of data.

As work to continually refine the system continues with State agency and vendor stakeholders, the goal of Phase III will be to integrate the central vendor file and the vendor information in the Vendor Responsibility System.

TIME LINE

The central vendor file is envisioned as a feature of the redesigned Central Accounting System (FOCAS project), an Office of the State Comptroller initiative. The central vendor file will be integrated with the Financial Management System (FMS) during Phase III.

For all phases, agency support is critical. State agency procurement staff are encouraged to communicate outreach needs to the Office of the State Comptroller and participate in sharing best practices. In addition, procurement officers are encouraged to continue participating in advisory groups to help further refine this important system initiative.

TIME LINE

Function	Description	Phase
<p>Enrollment, Online Questionnaire</p>	<p>Vendor, State agency and the Office of the State Comptroller users will be able to enroll in the Office of the State Comptroller's portal and access the Vendor Responsibility Application. All users will be given a user name and password after a validation is completed.</p> <p>A vendor will be required to enter basic vendor data after enrolling in the portal. Business activity and entity type entered by the vendor will determine the questions they will be required to answer. The vendor's response to each question will determine if there is additional information that must be provided. Attachments can be uploaded when necessary to provide additional information. The question set will be available in a printer friendly format.</p> <p>When the question set has been completed, the next step is certification. A vendor user with the role of certifier will be permitted to certify the response. After the certification has been entered, State agencies will be able to view the vendor's response. A history of all certified responses from the vendor will be saved and available for viewing.</p> <p>All users will have access to online help and will be able to contact the help desk via email or telephone.</p>	<p>I</p>
<p>Initial Interfaces</p>	<p>The interfaces will either display data related to the vendor or validate data the vendor has entered.</p>	<p>I</p>
<p>Additional Interfaces</p>	<p>The interfaces will either display data related to the vendor or validate data the vendor has entered.</p>	<p>II</p>

TIME LINE

Function	Description	Phase
<p>Online Vendor Responsibility Documentation, Resource Checklist, Issue Publication</p>	<p>State agencies will have the ability to submit their profile consisting of the agency's responsibility determination, description of the determination process and issues that were uncovered during the agency's review.</p> <p>After review by the Office of the State Comptroller, issues entered by State agency users that are determined to be accurate and fact based will be available for other State agencies to view.</p> <p>An optional resource checklist will allow State agencies to indicate the information that was reviewed during their vendor responsibility review. Interfaces to other systems will allow online verification of data.</p>	<p>II</p>
<p>FOCAS Integration, FMS Integration</p>	<p>The central vendor file and the vendor information in the Vendor Responsibility System will be integrated.</p>	<p>III</p>



Procurement and Disbursement Guidelines

Bulletin No. G-221
November 1, 2004

Vendor Responsibility: Standards, Procedures, and Documentation Requirements

Purpose

The purpose of this bulletin is to remind contracting agencies of their legal obligations with respect to determining the responsibility of a vendor to whom a contract may be awarded.

This bulletin also serves to outline the Comptroller's new procurement record requirements. These new procurement record requirements will ensure that:

- Public dollars are being spent appropriately with responsible contractors; and
- The procurement record on file with the Comptroller's Office is complete.

Legal Requirements

State procurement laws require that state agencies award contracts only to responsible contractors. Additionally, the Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the State Finance Law.

Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible offerer." Section 163 (9) f of the SFL requires that prior to making an award of a contract, each contracting agency shall make a determination of responsibility of the proposed contractor.

Section 8 of the Public Buildings Law provides that all contracts for amounts in excess of five thousand dollars for the work of construction, reconstruction, alteration, repair or improvement of any state building, whether constructed or to be constructed must be offered for public bidding and may be awarded to “the lowest responsible and reliable bidder,” as will best promote the public interest, by the said department or other agency with the approval of the Comptroller for the whole or any part of the work to be performed, and, in the discretion of the said department or other agency, such contracts may be sublet; provided, however, that no such contract shall be awarded to a bidder other than the lowest responsible and reliable bidder without the written approval of the Comptroller.

As a result, once an agency, in accordance with the applicable procurement statute, has determined which contractor(s) should be awarded a contract, the agency must affirmatively determine that such contractor is responsible before it can award the contract to such contractor and execute any contract. Furthermore, the Comptroller will not approve a contract unless he or she concurs that the proposed contractor is responsible.

**Factors Affecting
A Contractor’s
Responsibility**

Section 163(c) of the SFL provides:

“‘Responsible’ or ‘responsibility’ shall have the same meaning as such terms have been interpreted prior to the effective date of this article.”

The courts, in examining contractor “responsibility,” have indicated that “responsibility” is “an elastic word,” encompassing factors including financial ability to complete the contract, accountability, reliability, skill, sufficiency of capital resources, judgment, integrity, and “moral worth.”

Whether a contractor is “responsible” is a question of fact to be determined on a case-by-case basis. Based upon existing legal precedents, responsibility determinations can and should involve a review of the following four major categories:

1. Does the contractor possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by the federal government, prior determinations of integrity-related non-responsibility, etc.

APPENDIX A: PROCUREMENT AND DISBURSEMENT
GUIDELINES

2. Has the contractor performed at acceptable levels on other governmental contracts? Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.
3. Is the contractor legally capable of performing the contract? Factors to be considered include authority to do business in New York State (under the Business Corporation Law or Not-For-Profit Corporation Law), licensing (e.g., with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc.
4. Is the contractor financially and organizationally capable of performing the contract? Factors to be considered include assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

The courts have also recognized a protected constitutional due process liberty interest in connection with a determination of non-responsibility. Therefore, prior to finding a contractor non-responsible, the contracting agency must offer the “safeguards of reasonable notice and timely opportunity to be heard.” This does not require a full evidentiary hearing. Rather, written notice, together with an opportunity to rebut the concerns over the contractor’s responsibility, either in writing or at a meeting with the contracting agency, would appear to be sufficient (see suggested process to be followed below).

Agency Obligations/ OSC ➤ Review of Contractor Responsibility

Agencies are required to undertake an affirmative review of the responsibility of any contractor to whom they propose to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor is responsible. In undertaking such review, agencies must comply with the following standards:

- In all cases, agencies must consider any information that has come to their attention from the proposed contractor or any other source that would raise issues concerning the proposed contractor's responsibility.
- In the case of any contract valued at \$100,000 or more, agencies must affirmatively require disclosure by the proposed contractor of all information that the agency reasonably deems relevant to a determination of responsibility. At a minimum, such disclosure must satisfy the tests detailed above in "Factors Affecting a Contractor's Responsibility."
- An agency should notify a contractor, in writing, of its preliminary determination that the contractor is non-responsible, detailing the exact reasons for such preliminary determination. The contractor should be given a reasonable time from the receipt of the agency notice to file a written appeal. If a dispute as to the facts arises from this process, the agency may, at its option, hold a hearing to fully air this dispute. If the contractor files an appeal, the agency should promptly review it and make a final determination regarding the responsibility of the contractor.

➤ Contractors' Affiliates, Owners and Officers

The same tests applied in determining the responsibility of a contractor should also be applied to that contractor's affiliated businesses, as well as to any business entity to which the contractor is a subsidiary.

The same tests applied in determining the integrity of a contractor should also be applied to the owners and/or officers of the contractor.

➤ Contracting Agency Certification.

The contracting agency must certify in the procurement record that:

“[the agency] has undertaken an affirmative review of the proposed contractor’s responsibility in accordance with the standards outlined in Comptroller’s Bulletin No. G-221, and based upon such review, has reasonable assurance that the proposed contractor is [responsible or non-responsible, as applicable].”

Signed _____

Such certification must be made by an authorized signatory (see Comptroller’s Bulletin No. G-126 on authorized signatures).

➤ Contracting Agency Documentation

The contracting agency must document in the procurement record the basis for the agency’s determination that the proposed contractor is responsible, including any information provided by the proposed contractor; any analyses or determinations concerning the responsibility of the proposed contractor prepared by agency staff or made by the agency; and any other information compiled in the course of its responsibility review. If the agency has required the proposed contractor to complete a Responsibility Questionnaire, the agency must include such completed questionnaire in the procurement record.

Additionally, if the original low bidder or best value offerer was determined by the agency to be non-responsible, resulting in the agency forwarding a contract with a contractor, which was not the original low bidder/best value offerer, the agency must document the basis for the agency’s determination that the original contractor was non-responsible and the process that was followed in making such determination.

The contracting agency must include in the procurement record submitted to OSC for review **two copies** of a completed Vendor Responsibility Profile, which, with applicable attachments, is designed to provide OSC with the required Contracting Agency Certification and Contracting Agency Documentation detailed above.

OSC Review

As part of its review of the contract pursuant to Section 112 of the State Finance Law, the Comptroller's Office will review the procurement record prepared by the agency to verify that the agency has affirmatively certified its findings of responsibility. In addition, if OSC is not satisfied that there is adequate documentation of the proposed contractor's responsibility, OSC may either (i) return the contract unapproved, to the agency for further consideration of the proposed contractor's responsibility; or (ii) undertake its own review of the proposed contractor's responsibility.

Frequently Asked Questions

- *Does this bulletin apply to Purchase Orders?*

Yes. Each Purchase Order is a contract. If the Purchase Order is used to purchase goods or services off an existing New York State contract, then no new responsibility determination must be made (unless new information has come to your attention that you believe would challenge the responsibility of the contractor). If, however, the Purchase Order is used to purchase goods or services not off an existing New York State contract, a new responsibility determination must be made.

- *Does this bulletin apply to contract assignments?*

Yes. In contract assignments, while the contract performance remains the same, the contractor changes. Therefore, no contract assignment should be approved by the agency (pursuant to Section 138 of the State Finance Law and Paragraph 2 of Appendix A – Standard Clauses for NYS Contracts) without an agency determination that the assignee is responsible. (See also Comptroller's Bulletin No. G-206 regarding Contract Assignments).

- *When do these new requirements take effect?*

Contracts and Purchase Orders received at OSC for approval on or after January 1, 2005.

- *Where can I go for assistance?*

Your Agency Counsel
Your Agency Finance Office
OSC Contracts – (518) 408 - 3687
OSC Legal – John Dalton or Richard Redlo (518) 474-6011

APPENDIX A: PROCUREMENT AND DISBURSEMENT
GUIDELINES

More “**Frequently Asked Questions**” are available at
<http://www.osc.state.ny.us/vendrep/faqs.htm>

Helpful Links

- **Best Practices Bulletin on Vendor Responsibility**
<http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>
- **OSC Internet Site - State Agencies – Vendor Responsibility**
<http://www.osc.state.ny.us/vendrep/>

Appendix

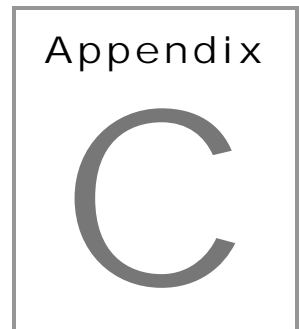
B

Outreach Sessions

Total Sessions: 47			
Total Individuals: 1,965			
Date	Event	Individuals	
Statewide Sessions: 9			
12/3 & 7/2004	Practical Implementation of Vendor Responsibility Agency Outreach	223	
1/27/2005	Applying Vendor Responsibility to Not-for-Profit Contractors and AG Charities Reg	66	
4/20/2005	Office of the State Comptroller Spring Event	39	
4/21/2005	SUNY Purchasing Association	100	
6/15/2005	Office of the State Comptroller Spring Event	71	
6/30/2005	Vend Rep State Agency Stakeholder Sessions	73	
10/7/2005	Mohonk House (Vendors)	200	
10/27,28/05	Fall Conference - 2005	183	
5/18-19/05	Office of General Services/Office of the State Comptroller State Purchasing Forum	300	
Total Individuals		1,255	
Agency Requested Training: 9			
12/15/04	Department of Health	200	
02/14/05	Department of Taxation and Finance	20	
06/29/05	Department of Corrections	100	
08/08/05	Division of the Budget	8	
09/26/05	Office of Mental Retardation and Developmental Disabilities	50	
10/14/05	Department of Health - Division of Nutrition	13	
11/30/05	SUNY- Downstate Medical	28	
12/02/05	Office of Mental Health	10	
12/20/05	Office of the State Comptroller - Help Desk Staff	6	
Total Individuals		435	

APPENDIX B: OUTREACH SESSIONS

Date	Event	Individuals		
Agency Meetings Regarding Vendor Responsibility: 21				
12/23/04	Education Department	3		
02/25/05	Dormitory Authority	3		
	Assembly and Senate	10		
02/02/05	Senate	10		
02/08/05	Department of Health	10		
02/16/05	Senate	10		
02/17/05	Corrections (Corcraft)	10		
04/04/05	Office of General Services, Department of Environmental Conservation, Dormitory Authority, Parks, Recreation and Historic Preservation, and Department of Transportation	8		
05/06/05	Agriculture and Markets	8		
05/31/05	Governor's Office of Employee Relations	5		
early 2005	Department of Transportation	5		
	Insurance Department	3		
9/9/005	Office of General Services	5		
	Office of General Services	3		
03/23/05	Office of General Services	3		
02/28/05	Thruway Authority	4		
02/22/05	Department of State	2		
12/9/04 & 2/7/04	SUNY Administration	9		
02/15/05	SUNY Construction Fund	3		
02/24/05	Veterans Affairs	4		
05/04/05	Unified Court System	4		
Total Individuals		122		
			State Agencies	
Question Set Meetings-Agencies: 4		Individuals		
9/20/2005	Question Set - Agencies	20	20	
9/22/2005	Question Set - Agencies	19	14	
9/28/2005	Question Set - Agencies	22	16	
10/5/2005	Question Set - Agencies	21	15	
Total Individuals		82		
Question Set Meetings-Vendors: 4		Individuals		Vendors
11/22/2005	Question Set - NFP-Rochester	12		14
11/29/2005	Question Set Meeting - FP-Non Profit Coordinating Committee	32		30
12/8/2005	Question Set - FP - Business Council of New York State, Inc.	17		12
12/15/2005	Question Set - NFP- Council of Community Services of New York State, Inc.	10		9
Total Individuals		71	Total Vendors	65



Agency Survey

For purposes of this survey, “State Agency” refers to your organization, the contracting entity; “Vendor” refers to a contractor, vendor, or grantee which receives or applies for funding from the State, either through a Contract or Purchase Order, directly or as a subcontractor or recipient.

Needs Analysis

A. Based on the proposed system and its capabilities as described below, indicate your Agency’s priorities for inclusion (1=High, 2 = Medium, 3 = Low):

_____ On-line Enrollment

State Agencies and Vendors enter information about their organization and their organization’s authorized users, which is used to verify the organization’s identity. A user name and password is activated for each authorized user once the data has been verified.

_____ On-line Vendor Questionnaire Responses

Vendors enter and maintain responsibility questionnaire responses online and, upon completion, responses are available for viewing by authorized State Agency staff.

_____ Enter Vendor Responsibility Issues and Responsibility Determinations

State Agencies record issues related to a Vendor’s responsibility and the associated vendor responsibility determination. This data is available for viewing by all authorized State Agency and OSC staff as part of their respective responsibility review processes.

_____ Connect to sources of information related to vendor responsibility

Various public sources of data for use in determining a Vendor’s responsibility are accessible through the system, allowing State Agencies to view multiple data sources in one location.

_____ Access to Basic Contract Data
Search functionality allows a State Agency to view basic data (dates, amounts) on a Vendor's contracts with NYS.

_____ Access various Search and Report capabilities

B. What additional capabilities would you recommend that OSC consider for inclusion in this system? _____

C. Estimate how many user accounts your Agency would need: _____

Impact on Processing

At the time a bid, proposal or application is submitted, a Vendor's responsibility information must be up-to-date. Changes in a Vendor's responsibility information may occur at any time, and contracts may come up for amendment and/or renewal at any time. With what frequency should Vendors be required to update and certify their responsibility information? (Check all that apply)

Update Certify

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Upon request by a State Agency (may happen many times in one year) |
| <input type="checkbox"/> | <input type="checkbox"/> | When a Vendor competes for a contract or applies for funding |
| <input type="checkbox"/> | <input type="checkbox"/> | When changes occur in the Vendor's responsibility information |
| <input type="checkbox"/> | <input type="checkbox"/> | Annually |
| <input type="checkbox"/> | <input type="checkbox"/> | Every three years |
| <input type="checkbox"/> | <input type="checkbox"/> | Other _____ |

Technology Status

A. Internal System Resources

1. Does your Agency utilize any of the following systems to receive and/or track vendor responsibility data?

- Main frame system Client/Server system Web-based system
 Stand-alone Software (MS Access/Excel, etc.) Scanners
 Other _____

a. What other functions are performed by this system? _____

b. Rate the impact a new centralized system would have on your current system.

High Medium Low

c. Describe the impact a new centralized system would have on your current system. _____

B. Internet Connectivity

1. Do procurement personnel in your Agency have access to the Internet?

Yes No

2. Do all or most procurement personnel in your Agency have individual email addresses?

Yes No

3. What web browser software is used within your Agency? (Check all that apply)

<input type="checkbox"/> Internet Explorer - Version 5.0 or higher	<input type="checkbox"/> AOL
<input type="checkbox"/> Internet Explorer - Lower than Version 5.0	<input type="checkbox"/> Other _____
<input type="checkbox"/> Netscape Navigator - Higher than Version 4.7	
<input type="checkbox"/> Netscape Navigator - Version 4.7 or lower	

4. What personal computer operating systems are used within your Agency? (Check all that apply)

<input type="checkbox"/> Windows NT	<input type="checkbox"/> Windows XP
<input type="checkbox"/> Windows 95	<input type="checkbox"/> Windows 98
<input type="checkbox"/> Windows 2000	<input type="checkbox"/> Mac OS
<input type="checkbox"/> Linux	<input type="checkbox"/> Other _____

5. Does your Agency submit information to or receive information from other organizations over the Internet?

Yes No

If yes, with which organizations and what type of information do you exchange over the Internet? _____

6. Are you comfortable receiving or submitting information over the Internet?

Yes No

If no, explain why not: _____

Training

A. Is your Agency's organizational structure for Contracts and Purchasing:

Centralized Decentralized

B. Estimate the number of individuals in your Agency who would require training to use the new system: _____

C. Rank in order (1 = best) the training methods preferred by your Agency:

_____ On-line help/user manual _____ Video conference learning
_____ Hotline assistance _____ Instructor-led regional class training
_____ On-line interactive training

Additional Ideas or Concerns

A. What potential benefits do you foresee from the proposed system? _____

B. What potential issues do you foresee with the proposed system? _____

C. Are there additional ways that OSC could make the Vendor Responsibility review process more efficient, effective, or easier? _____

Identifying Information

Agency Name: _____

Agency Code: _____

Prepared By: _____

Phone: _____

E-mail: _____

Date: _____

Title: _____

Fax: _____

Website: _____

Future Input:

A. May we contact your Agency about participating in OSC stakeholder input sessions?

Yes No

B. Check how you would be willing to participate:

Occasional meetings Regular meetings Comment on proposals
 Surveys Faxes E-mail

APPENDIX C: AGENCY SURVEY

C. Contact name for future input:

Phone: _____

Fax: _____

E-mail: _____

Please complete this survey electronically, save the document and e-mail the completed survey to: vendrep@osc.state.ny.us. If it is not possible to complete the survey electronically or email, please fax the completed survey to (518) 408-3827.
Your response by June 8, 2005 will be greatly appreciated.

Thank you for taking the time to respond to this survey.



Vendor Survey

For purposes of this survey, “Vendor” refers to a contractor, vendor, or grantee which receives or applies for funding from a State Agency, either through a Contract or Purchase Order, directly or as a subcontractor or recipient. “State Agency” refers to the New York State agency/contracting entity from which the Vendor receives funding. “OSC” refers to the New York State Office of the State Comptroller.

Needs Analysis

A. Based on the proposed system capabilities described below, indicate the Vendor’s priorities for inclusion (1=High Priority, 2 = Medium Priority, 3 = Low Priority):

	<p>On-line Enrollment A Vendor enters information about the Vendor and the Vendor’s authorized users, which is used by a central State administrator to verify the Vendor’s identity. A user name and password is activated for each authorized user once the Vendor and user data has been verified.</p>
	<p>Completing Questionnaire A standard set of questions related to vendor responsibility is available online to authorized Vendor users. The questionnaire allows a Vendor to answer the questions over a series of sessions and only submit the information when the Vendor deems the questionnaire responses complete. The completed questionnaire can be updated by a Vendor any time the Vendor’s information changes. Relevant electronic documents can also be attached to the questionnaire.</p>
	<p>Vendor access to basic contract data Search functionality allows a Vendor to view basic data (dates, amounts) on its contracts with NYS.</p>

B. What additional capabilities would you recommend that OSC consider for inclusion in this system? _____

C. Estimate the number of individual user accounts your organization would need: _____

Impact on Processing

A. For the year ending December 31, 2004, either as a prime, subcontractor or through an affiliate/related company:

1. Estimate the number of applications, bids or proposals you have submitted in response to State Agency procurements:

None 1-3 4-6 More than 6

2. Identify the number of active contracts currently held with State Agencies:

None 1-3 4-6 More than 6

B. For a recent State Agency procurement, estimate the number of pages you submitted to meet vendor responsibility questionnaire requirements (include in the estimate any attachments submitted with the questionnaire). _____

C. In what format do you currently submit vendor responsibility documents (check all that apply):

Paper E-mail On-line

1. If on-line, to which State Agencies have the documents been submitted: _____

2. If on-line, to which non-New York State funding sources (i.e., federal government, other states, foundations) have the documents been submitted: _____

D. Have you submitted other procurement information to any State Agency over the Internet (excluding e-mail)?

Yes No

If yes, identify the State Agencies and type of information submitted: _____

E. At the time a bid, proposal or application is submitted, a Vendor's responsibility information must be up-to-date. Changes in a Vendor's responsibility information may occur at any time, and contracts may come up for amendment and/or renewal at any time. With what frequency should Vendors be required to update and certify their responsibility information? (Check all that apply)

Training

A. Estimate the number of individuals who would require training to use the new system.
_____.

B. Rank in order (1 = best) the training methods preferred:

- | | |
|------------------------------------|--|
| _____ On-line help/user manual | _____ Video conference learning |
| _____ Hotline assistance | _____ Instructor-led regional class training |
| _____ On-line interactive training | |

C. Would your staff find value in training in New York State's: (Check all that apply)

- Vendor responsibility policies and procedures.
- General procurement policies and procedures.

Additional Ideas or Concerns

A. What potential benefits do you foresee from the proposed system? _____

B. What potential issues do you foresee with the proposed system? _____

C. Are there additional ways that NYS could make the Vendor Responsibility review process more efficient, effective, or easier? _____

Identifying Information

A. Vendor type:

- | | |
|--|--|
| <input type="checkbox"/> (For profit) Business Corporation | <input type="checkbox"/> General Partnership |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Not-for Profit Corporation |
| <input type="checkbox"/> Limited Liability Company (LLC) | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Unincorporated Association/Business | (any type – registered, family) |
| <input type="checkbox"/> Other - Specify _____ | |

B. Annual Gross Sales Revenue:

- Under \$500,000
- \$500,000 to \$1,000,000
- \$1 million to \$10 million
- \$10 million to \$25 million
- Over \$25 million

C. How many locations does the Vendor have? _____

D. List other names that the Vendor operates under: _____

APPENDIX D: VENDOR SURVEY

E. Total Number of Employees:

- Under 5 5-24 25-100 101-500 Over 500

F. Is the Vendor recognized by New York State as:

- Minority-Owned Women-Owned Small Business Enterprise

G. Indicate all the types of Contract/Purchasing activity between the Vendor and State Agencies:

- | | |
|--|--|
| <input type="checkbox"/> Grants | <input type="checkbox"/> Consulting |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Architect and Engineering |
| <input type="checkbox"/> Commodities | <input type="checkbox"/> Financial Services |
| <input type="checkbox"/> Service | <input type="checkbox"/> Revenue |
| <input type="checkbox"/> Leased property | <input type="checkbox"/> Land Sale or Purchase |
| <input type="checkbox"/> Printing | <input type="checkbox"/> Equipment |

H. Vendor Information:

Vendor Name: _____
Address: _____
Prepared By: _____ Title: _____
Phone: _____ Fax: _____
E-mail: _____ Website: _____
Date Completed: _____

I. **May we contact you about participating in OSC stakeholder input sessions?**

- Yes No

J. **Indicate how you would be willing to participate:**

- Occasional meetings Regular meetings Comment on proposals
 Surveys Faxes E-mail

K. **Contact name for future input:** _____

Phone: _____ Fax: _____ E-mail: _____

APPENDIX D: VENDOR SURVEY

Please complete the attached survey electronically, save the document and then e-mail the completed survey to: vendrep@osc.state.ny.us. If it is not possible to complete the survey electronically, please fax the completed survey to (518) 408-3827.

Your response by June 8, 2005 will be greatly appreciated

Thank you for taking the time to respond to this survey.



Agencies Represented at Joint Application Development and Question Set Sessions

Aging, Office for the
Agriculture and Markets, Department of
Alcoholism and Substance Abuse Services, Office of
Assembly, New York State
Banking, Department of
Bill Drafting Commission
Budget, Division of the
Children and Family Services, Office of
Correctional Services, Department of
Council on the Arts
Court Administration, Office of
Criminal Justice Services, Division of
Dormitory Authority
Economic Development, Department of
Education, Department of
Environmental Conservation, Department of
Environmental Facilities Corporation
Finger Lakes Developmental Disabilities Services Office
General Services, Office of
Governor's Office of Employee Relations
Health, Department of
Health Science Center at Syracuse
Housing and Community Renewal, Division of
Insurance Department
Labor, Department of
Law, Department of
Mental Health, Office of
Mental Retardation and Developmental Disabilities, Office of
Motor Vehicles, Department of

APPENDIX E: AGENCIES REPRESENTED AT
JOINT APPLICATION DEVELOPMENT AND
QUESTION SET SESSIONS

Parks, Recreation and Historic Preservation, Office of
Probation and Correctional Alternatives, Division of
Public Service, Department of
Science, Technology and Academic Research, Office of
Senate, New York State
State Comptroller, Office of the
State Insurance Fund
State Police, Division of
State, Department of
SUNY at Buffalo
SUNY at Fredonia
SUNY at Oswego
SUNY at Purchase
SUNY at Stony Brook
SUNY Binghamton
SUNY Central Administration
SUNY College Technology at Canton
SUNY Construction Fund
SUNY Health Science Center of Brooklyn
Taxation and Finance, Department of
Temporary and Disability Assistance, Office of
Thruway Authority
Transportation, Department of
Unified Court System
Veterans Affairs, Division of
Workers Compensation Board



Vendor Attendees for Question Set Meetings

A.R.T./New York
ACDP
Alliance against Sexual Assault
Animal Care and Control of New York City
Arbor Hill Development Corporation
ArtsConnection
BearingPoint, Inc.
Berkshire Farm Center and Services for Youth
CASES
Catholic Charities Community and Residential Services
Catholic Family Center of Rochester
Children's Institute, Inc.
Citizens Advice Bureau
Citizens for New York City
Community of Unity
Council on the Arts
Deloitte Consulting LLP
DePaul Group, Inc.
Discovery Huther-Doyle
Dress for Success
EDS
Family Justice
FECS
Food Bank for New York City
Gay Alliance of Genesee Valley
Greenberg Traurig, LLP
Hickock Center for Brain Injury
Hudson Guild
Human Services Council
Industrial and Technology Assistance Corp.
Integris, Inc./Bull Services

APPENDIX F: VENDOR ATTENDEES FOR QUESTION
SET MEETINGS

IS Consilium
J. P. Morgan Chase and Company
Jewish Community Center of Greater Rochester
KPMG, LLP
Lifespan of Greater Rochester, Inc.
Literacy Volunteers of America-Mohawk/Hudson
Maternity and Early Childhood Foundation
New York Academy of Medicine
New York University
New York State Child Care Coordinating Council
New York State Coalition Against Sexual Assault
New York State Industries for the Disabled
Parsons Child and Family Center
Planned Parenthood of the Rochester and Syracuse Region
Project Hospitality, Inc.
Rochester Childrens Nursery
Ryan White Care Network
Safe Horizon
Seedco
Special Needs Consulting
Spence Chapin Services
Steinway Child & Family Services
The Business Council of New York State, Inc.
The HOPE Program
The Osborne Association, Inc.
The Vandervort Group, LLC
The Walters Group
Threshold Center for Alternative Youth Services
Vera Institute of Justice
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Xerox Corporation
YMCA of Greater New York
Yorkville Common Pantry

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