Office of Operations'
2023 Virtual Fall Conference

# Contract Payment Review: Are We Getting What We Pay For?

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New York State Comptroller
THOMAS P. DiNAPOLI

# Roadmap

- Monitoring necessity
- Fraud
- Seven-step monitoring process

# Monitoring Necessity

# Why Monitoring is Necessary

- Billions in State Spending
- Risks
  - Health and Safety
  - Goal Achievement
  - Loss of State Resources
  - Reputation
- Prevent and mitigate
  - Fraud
  - Errors

# Fraud

# What is Fraud?

- Misstatement
  - Mistake vs. Fraud
- Knowledge of falsehood/intent
- Reliance by victim
- Damage

# What Is Fraud?

Fraud is any intentional act or omission designed to deceive others, resulting in the victim suffering a loss and/or the perpetrator achieving a gain.

Source: "Managing the Business Risk of Fraud: A Practical Guide" - IIA, AICPA, ACFE

# What Is Occupational Fraud?

The use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets.

Source: 2022 Report to the Nation on Occupational Fraud and Abuse

# How Much Is Lost?

- 5% of annual revenues
- Median loss of $117,000
  - $150,000 for small businesses
  - $60,000 for not-for-profits
  - $138,000 for government
- 21% had losses of at least $1 million

Source: 2022 Report to the Nation on Occupational Fraud and Abuse
The frauds represented in this study were committed in 133 countries, and targeted organizations in 23 distinct industry categories.

# How Is It Committed?

| Corruption | Asset Misappropriation | Financial Statement Fraud |
|---|---|---|
| **Bribery**<br>• Bid Rigging<br>• Invoice Kickbacks | **Fraudulent Disbursements**<br>• Check and Payment Tampering<br>• Billing | **Asset/Revenue Over- and Understatements**<br>• Improper Disclosures |
| **Conflict of Interest**<br>• Purchasing Schemes | **Noncash**<br>•Larceny | |

Source: 2022 Report to the Nation on Occupational Fraud and Abuse

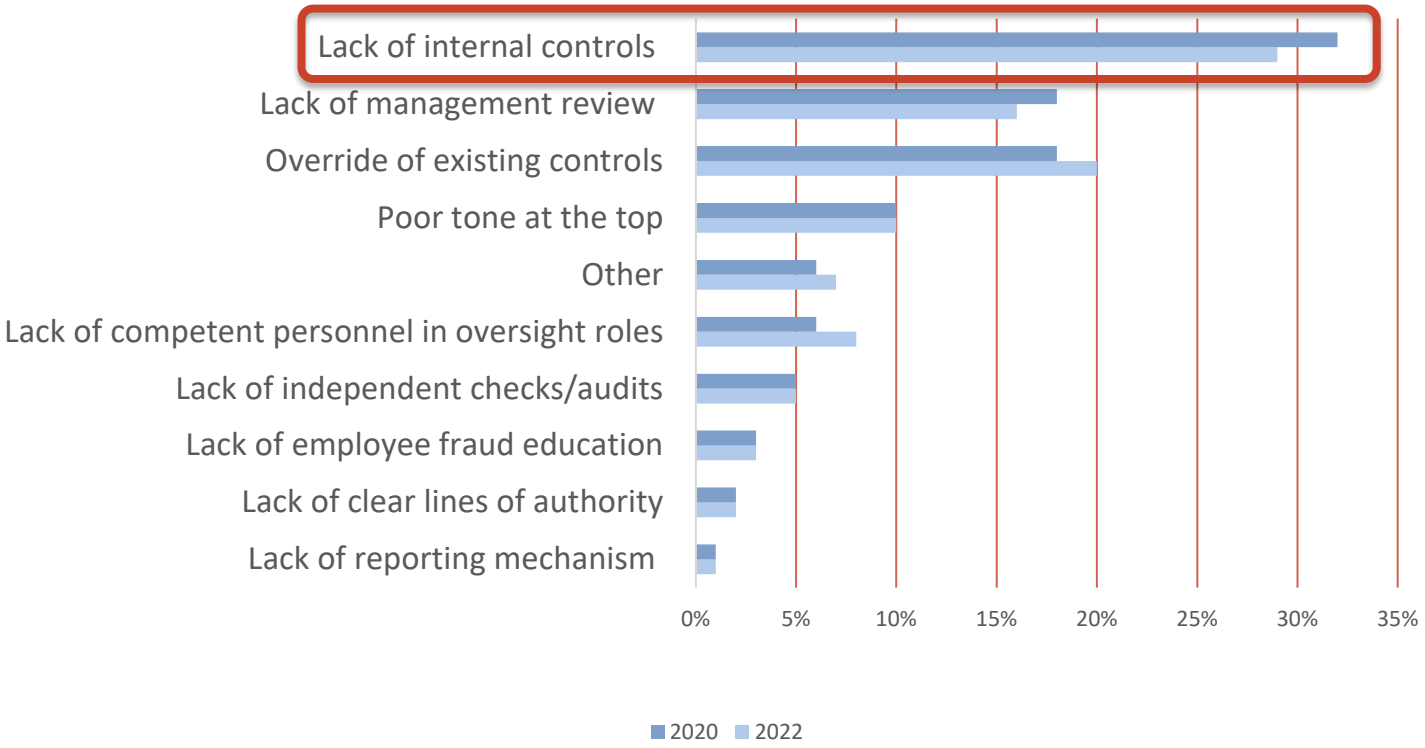
# Where Does It Happen?

Nearly **60%** of the frauds in the study were committed by individuals in 1 of 5 departments:

- **Operations –** corruption, noncash theft, billing
- **Accounting –** billing, check tampering, corruption
- **Executive/upper management –** corruption, financial statement fraud, billing, expense reimbursement
- **Sales –** corruption, noncash theft
- **Customer Service –** corruption, skimming

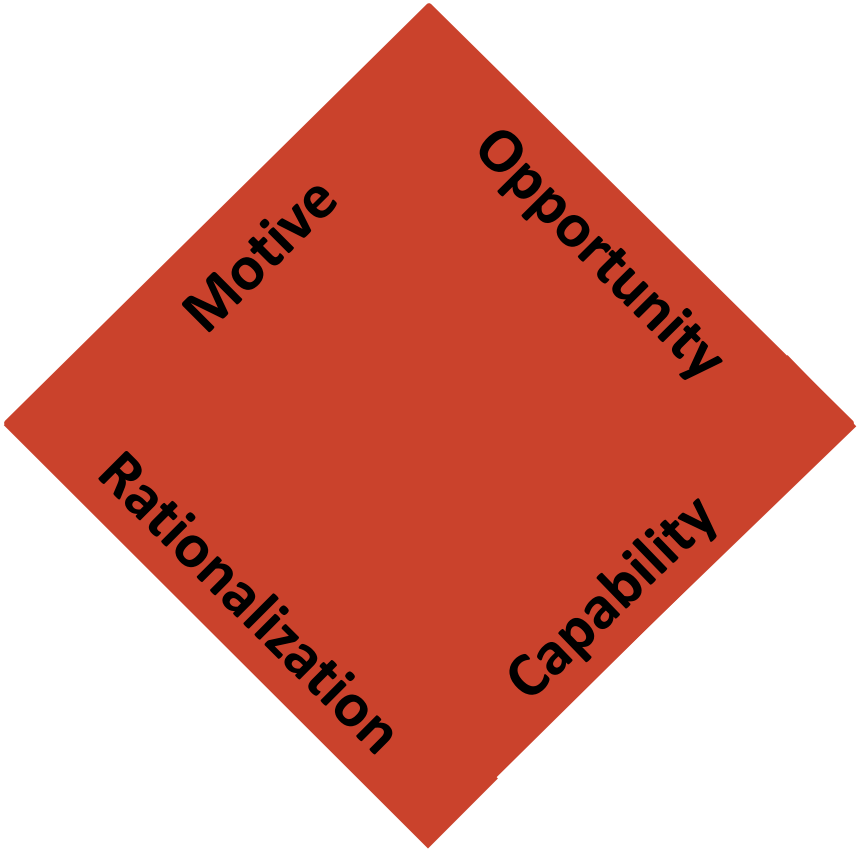
Source: 2022 Report to the Nation on Occupational Fraud and Abuse

# Internal Control Weaknesses Contribute to Fraud




Source: 2022 Report to the Nation on Occupational Fraud and Abuse

# How Does Fraud Happen?



# Motive Flags

- High debt
- Significant financial losses
- Excessive alcohol, drugs or gambling
- Perceived organizational inequities
- Job frustration or resentment

# Opportunity Flags

- Familiarity with operations
- Ability to override controls
- No periodic rotation of key employees
- No uniform personnel policies
- Lack of strong internal controls
- Management does not prosecute or punish fraud perpetrators

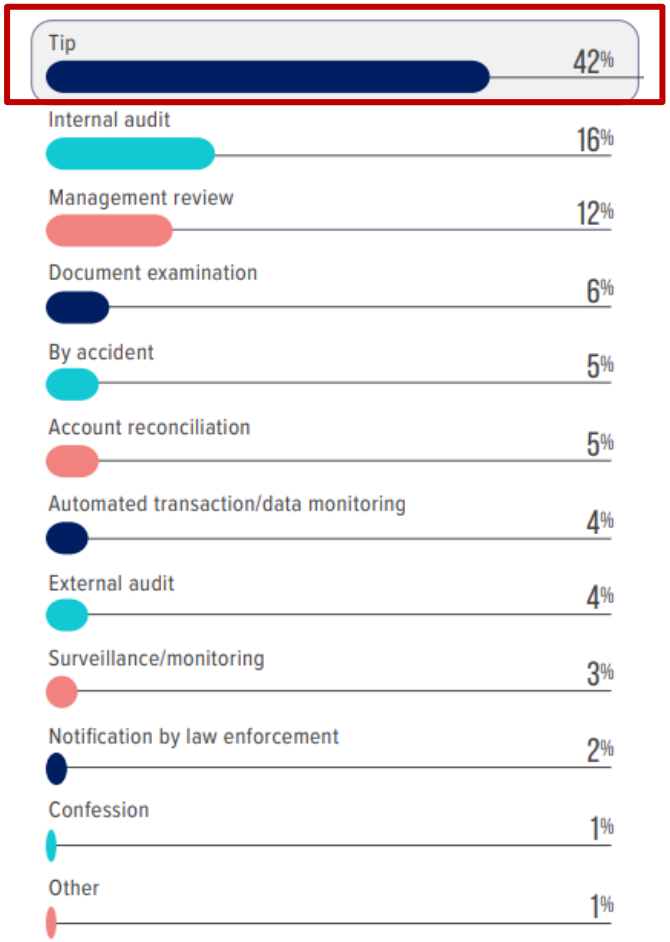
# Rationalization Flags

- They owe me
- I'm overworked
- I do the work of two people
- They'll never miss it
- I'll just borrow it; I'll pay it back
- I'm not really hurting anyone
- Everyone is a little dishonest

# Capability Flags

- Position/function
- Confidence/ego
- Coercion skills
- Effective lying
- Immunity to stress

# How Fraud Is Detected




Source: 2022 Report to the Nation on Occupational Fraud and Abuse

# Red Flags

- A warning or sense that something isn't right
- Should lead you to take a closer look at the transaction

# Document Flags

- Inadequate, copied, or apparently altered documents
- Invoice figures do not add up
- No letterhead
- Misspellings on document
- Vague information

# Document Flags

- Round amounts or amounts under approval levels
- Large dollar payments made with cash
- Vendor address is not local, but check is cashed locally

# Bid Rigging Flags – Vendors

- Fake Vendors
  - Employee created bids
- Real Vendors
  - No knowledge of bid submission
  - Shared owner with favorable vendor
    - Rescind bid

# Contracting Flags

- Restrictive or vague specifications
- Bids/quotes received from the same fax
- Similar letterheads of bidders
- Unreasonable bid amounts
- Lack of vendor contact information on bids
- Signature on bid is the company name

# Conflict of Interest Flags

- Relationships between awardee and agency staff
  - Address or identification number match
- Unexplained or unusual favoritism of a particular vendor
- Close socialization with or acceptance of gifts from the awardee

# Bribes and Kickbacks Flags

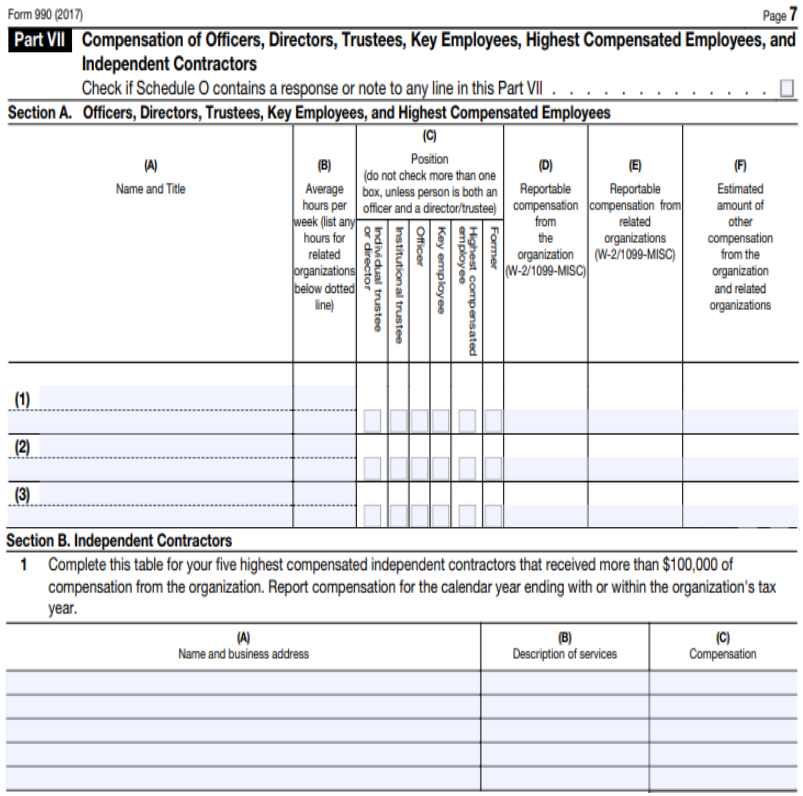
- Unjustified favoritism of a certain vendor
- Close socialization with or acceptance of inappropriate gifts from a vendor
- Unexplained increase in wealth of employee

# Additional Red Flags

- No supporting documentation submitted with payment request
- Relationships between the sponsoring state representatives and executive(s) at the vendor or organization

# Finding Relationships

- Check the Financials
  - NFP's 990
    - www.guidestar.org
    - www.charitiesnys.com
  - For Profit
    - Published
- Google/Google Maps
- White Pages
- LexisNexis/Accurint



Form 990 (2017) Page 7

**Part VII** **Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Check if Schedule O contains a response or note to any line in this Part VII . . . . . ☐

**Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees**

| (A) Name and Title | (B) Average hours per week (list any hours for related organizations below dotted line) | (C) Position (do not check more than one box, unless person is both an officer and a director/trustee) | | | | | (D) Reportable compensation from the organization (W-2/1099-MISC) | (E) Reportable compensation from related organizations (W-2/1099-MISC) | (F) Estimated amount of other compensation from the organization and related organizations |
|---|---|---|---|---|---|---|---|---|---|
| | | Individual trustee or director | Institutional trustee | Officer | Key employee | Highest compensated employee | Former | | | |
| (1) | | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | | | |
| (2) | | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | | | |
| (3) | | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | | | |

**Section B. Independent Contractors**

1 Complete this table for your five highest compensated independent contractors that received more than $100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

| (A) Name and business address | (B) Description of services | (C) Compensation |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

# 7-Step Monitoring Process

# 7-Step Process

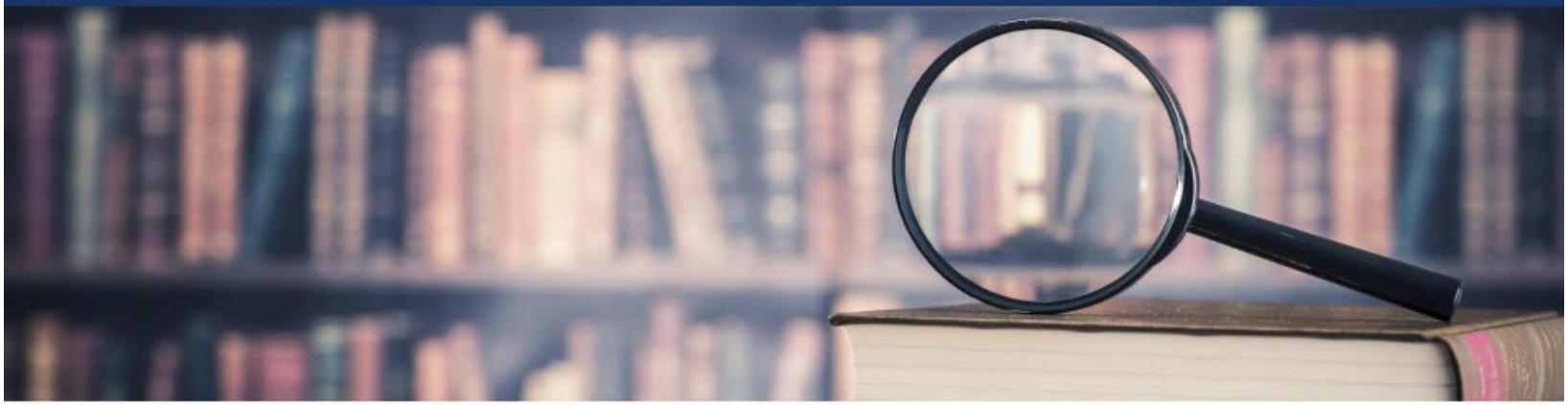
1. Identify contracts to review
2. Understand requirements
3. Identify risks
4. Prioritize risks
5. Determine risk response
6. Design/execute monitoring activities
7. Follow up

# Step 1:

# Identify Contracts to Review

# Step 1.
# Identify Contracts to Review

- What data do you have available?
- How can it help you identify contracts to review?



# Open Book New York

> "New Yorkers pay among the highest taxes in the country. It's important to have transparency so citizens are empowered with information they need to hold their elected officials accountable." – Thomas P. DiNapoli

## Search Millions of State and Local Government Financial Records

As the State's Chief Financial Officer, Comptroller DiNapoli believes New Yorkers deserve to know how their tax dollars are spent. Without transparency in government, there cannot be accountability. His open data initiatives are a commitment to this belief.

If you've ever wondered how much it costs to run your fire department or how much your city spends on education, you can easily track where money is going and how it's being reflected in the State's spending priorities using the Comptroller's Open Book New York.

Also see Additional Financial Information.

### State Contracts

Search 220,000 contracts that State agencies have with businesses, not-for-profit organizations and other governmental entities in effect April 1, 2012, or later. Includes both contracts approved by the Office of the State Comptroller and those that don't require approval by the Office.

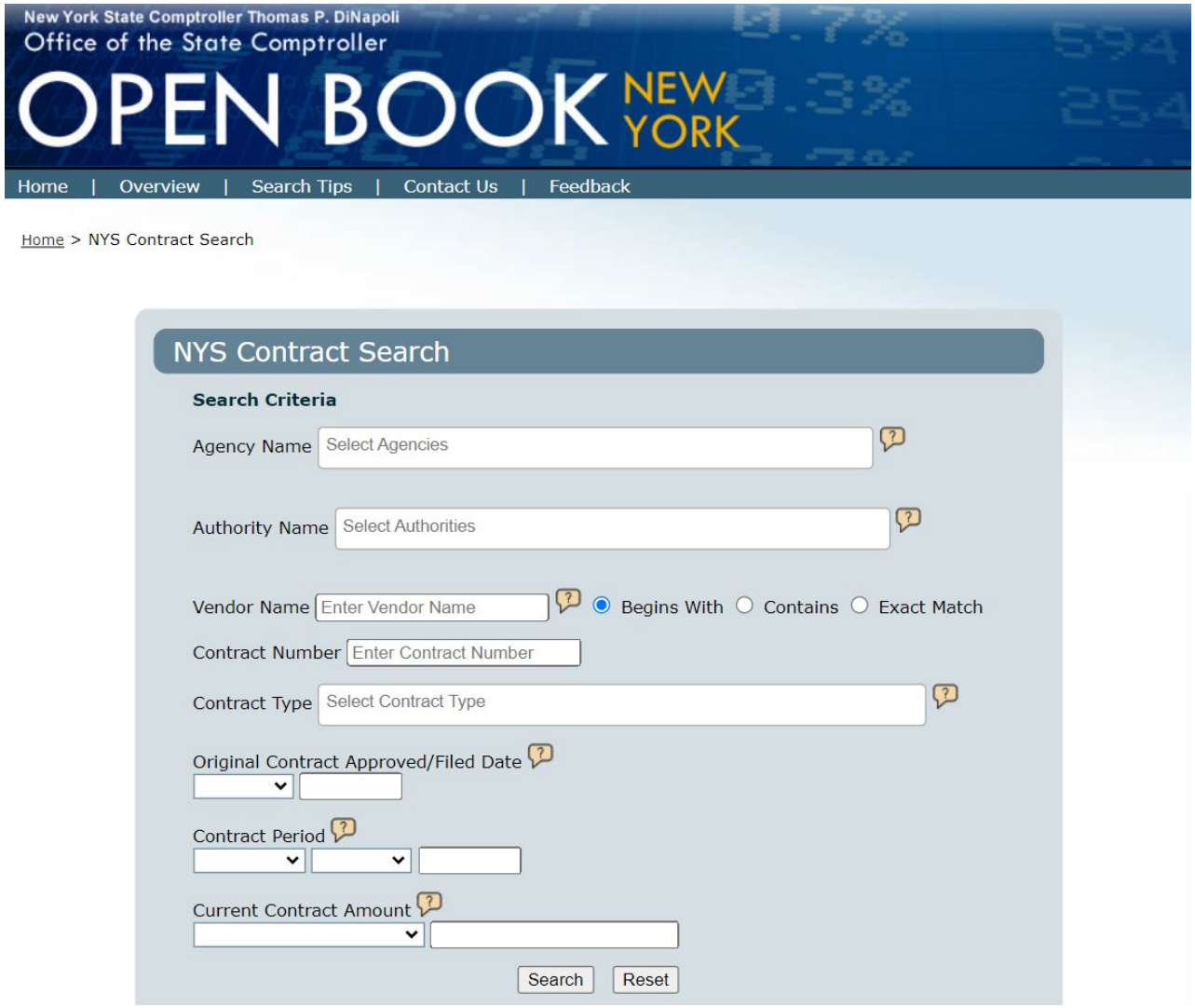
Search Contracts

### State Payments

Search payments made by the state since April 1, 2012, which now includes about 17,000 new payments each day, and contains the agency submitting the payment request, the payment recipient, the payment amount and the date the payment was made.

Search Payments

Also see Legislative Travel and Per Diem Expenses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Office of the State Comptroller
OPEN BOOK NEW YORK
Home | Overview | Search Tips | Contact Us | Feedback
Home > NYS Contract Search
NYS Contract Search
Search Criteria
Agency Name
Select Agencies
Authority Name
Select Authorities
Vendor Name
Enter Vendor Name
Begins With
Contains
Exact Match
Contract Number
Enter Contract Number
Contract Type
Select Contract Type
Original Contract Approved/Filed Date
Contract Period
Current Contract Amount
Search
Reset

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# OPEN BOOK NEW YORK

Home | Overview | Search Tips | Contact Us | Feedback

Home > NYS Contract Search > Contract Search Results

## Contract Search Results

Download Summary Contract Information to a Printer Friendly (PDF)
Download Summary Contract Information to an Excel Spreadsheet
Download Additional Contract and Related Amendment Data for OSC approved transactions

15,261 Contracts Found - Displaying page 1 of 306
Agency = Health, Department of
**1** 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 - Next (25) - Last

| Vendor Name | Department/Facility | Contract Number | Current Contract Amount | Spending to Date | Contract Start Date | Contract End Date | Contract Description | Contract Type | Original Contract Approved/Filed Date |
|---|---|---|---|---|---|---|---|---|---|
| NEW YORK QUALITY HEALTHCARE CORPORATION | Department of Health | C034552 | $47,703,984,176.00 | $0.00 | 03/01/2019 | 02/29/2024 | Medicaid managed care | Service - Medical/ Pharmaceutical Services | 09/04/2020 |
| HEALTHFIRST PHSP INC | Department of Health | C034544 | $37,654,968,146.00 | $0.00 | 03/01/2019 | 02/29/2024 | Medicaid managed care | Service - Medical/ Pharmaceutical Services | 08/04/2020 |
| HEALTHFIRST PHSP INC | Department of Health | c029333 | $26,565,239,049.00 | $0.00 | 03/01/2014 | 02/28/2019 | Comprehensive Health Services to Medicaid and/or Family Health Plus Beneficiaries | Service - Medical/ Pharmaceutical Services | 10/30/2015 |
| NYS CATHOLIC HEALTH PLAN INC | Department of Health | c029339 | $24,692,329,875.00 | $0.00 | 03/01/2014 | 06/30/2018 | Comprehensive Health Services to Medicaid and/or Family Health Plus Beneficiaries | Service - Medical/ Pharmaceutical Services | 10/27/2015 |
| HEALTHFIRST PHSP INC | Department of Health | C029333 | $24,448,378,431.00 | $0.00 | 03/01/2014 | 02/28/2019 | Comprehensive Health Services to Medicaid and/or Family Health Plus Beneficiaries | Service - Medical/ Pharmaceutical Services | 05/19/2015 |

# Identify Contracts to Review

Sort contracts by:

- Contract Amount
- Vendor Name and Contract Count
- Vendor Name and Spending to Date

# Identify Contracts to Review

Sort contracts by:

- Contract start date
- Contract description and contract count
- Contract description and contract amount
- Percent of contract expended
- Number of years remaining on the contract
- Contract type (e.g., consultant, service, grant)

# Common Concerns

- Risk basis
- Other factors
  - Quality of products and services
  - Problems with vendors
  - Current events
  - Locations

# Monitoring

- Ongoing activities, special evaluations or a combination of both used to ensure that controls are operating as intended.

# Step 2:

# Understand Contract Terms

# Step 2.
# Understand Contract Terms

- Reasoning
- Conversation
- Purchase order details
- Contract specifications
- Laws, rules and regulations
- Guidelines

# Contract Terms

- Understand
- Assess quality
- Ask:
  - How can I verify that the terms of the contract are being met?

# Specifications

- **S**pecific
- **M**easurable
- **A**chievable
- **R**elevant
- **T**ime-Bound

SMART

# Contract Terms – Example

- Contractor will provide
  - One on-site, dedicated (resident) class A elevator mechanic during the hours of 9:00 AM and 5:00 PM on Monday through Friday
  - One on-site, dedicated class A helper during the hours of 9:00 AM and 5:00 PM on Monday through Friday
- There will be no overtime

# Step 3:

# Identify Risks

# Step 3. Identify Risks: What Can Go Wrong?

- Programmatic
  - What can prevent contract terms from being accomplished?
- Fiscal
  - How can the contractor get money they are not entitled to?

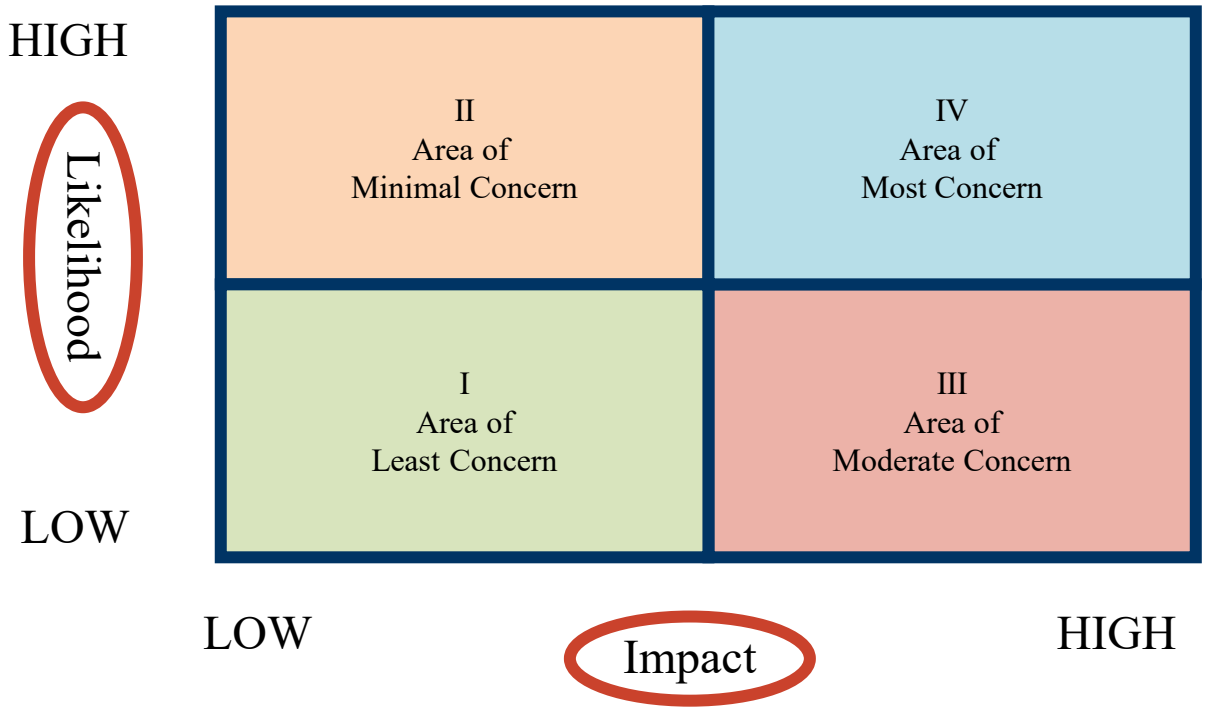
# Identify Risks – Example

| Risk | Area |
| --- | --- |
| The mechanic and/or helper work overtime | Programmatic and Fiscal |
| Contractor does not provide one on-site resident mechanic and one on-site resident helper | Programmatic |

# Step 4:

# Prioritize Risks

# Step 4. Prioritize Risks: So, What's the Big Deal?



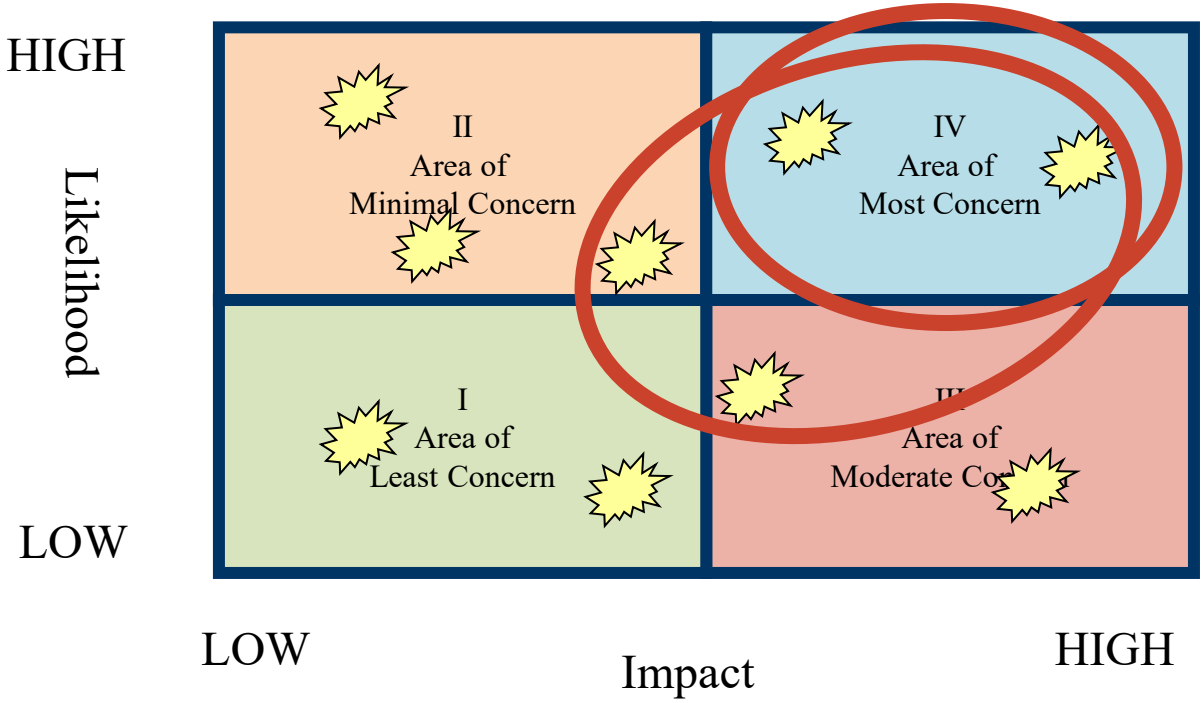
# Prioritize Risks – Example

| Risk | Area | Likelihood | Impact |
|---|---|---|---|
| The mechanic and/or helper work overtime | Programmatic and Fiscal | Medium | High |
| Contractor does not provide one on-site resident mechanic and/or one on-site resident helper | Programmatic | Medium | High |

# Step 5:

# Determine Risk Response

# Step 5. Determine Risk Response



# Determine Agency's Response to the Risks

- Mitigate
  - Revise administrative procedures
  - Improve control systems
  - Increase auditing
  - Other
- Accept

# Determine Risk Response – Example

| Risk | Area | Likelihood | Impact | Priority |
|---|---|---|---|---|
| The mechanic and/or helper work overtime | Programmatic and Fiscal | Medium | High | Mitigate Risk |
| Contractor does not provide one on-site resident mechanic and/or one on-site resident helper | Programmatic | Medium | High | Mitigate Risk |

# Step 6:

# Design/Execute Monitoring Activities

# Step 6. Design and Implement Monitoring Activities

- Design steps to mitigate risks
  - Who is going to do it?
  - How are they going to document it?
  - To whom are they going to give the documentation?

# Monitoring

## Objective

- Gather information to determine whether things are happening the way they are supposed to be.

# Evidence

- Enough information (Sufficient)
- The right information (Appropriate)

# Evidence

- Physical
  - Obtained by auditors' direct inspection or observation of people, property, or events
- Documentary
  - Already existing information e.g., letters, contracts, accounting records, invoices
- Testimonial
  - Obtained through inquiries, interviews, focus groups, public forums, or questionnaires

# Who Should Monitor?

- Program staff
- Finance staff
- Consultants
- Agency auditors
- OSC auditors

# Monitoring Process

- Timing
- Extent

# Professional Skepticism

An attitude that includes a questioning mind and critical assessment of information.

# Design and Implement Monitoring Activities – Example

| Monitoring Activities | Who | How Often | How to Document | Who Receives Documentation | Where to Store Documentation |
|---|---|---|---|---|---|
| 1) Contractor employees sign in and out on agency elevator oversight log<br><br>2) Facilities Maintenance Engineer periodically inspects contractor arrival and departure times | Facilities Maintenance Engineer or appropriate designee | Weekly at first<br><br>More or less often as necessary | Agency elevator oversight log | Prepare e-mail to Clerk 2 in Accounts Payable by COB the first business day of the month | Facilities Maintenance Engineer Office |

# Break Time!

**Please return on time to remain on schedule.**

**Thank you.**

# Step 7:

# Follow Up

# Step 7. Follow Up

| Degree of Compliance | Agency Response |
|---|---|
| **High** | • **Re-evaluate** and possibly **reduce** monitoring frequency |
| **Moderate** | • Direct the contractor to **correct identified deficiencies** |
| | • Facilitate development of a **corrective action plan** |
| | • **Advise** accounts payable employees |
| | • **Identify** and **recover** any overpayments |
| | • **Increase scrutiny** of contractor reports and invoices |
| | • **Increase frequency** of follow-up monitoring activities |
| **Low** | • Facilitate development of a **corrective action plan** (where practical) and **increase the frequency** of follow-up monitoring activities |
| | • **Increase scrutiny** of contractor reports and invoices |
| | • **Terminate contract** where corrective action is not practical |
| | • **Advise** accounts payable employees |
| | • **Identify** and **recover** any overpayments |
| | • Consider **referral for prosecution** |

# Follow Up – Example

| Risk | Degree of Compliance | Agency Response |
|---|---|---|
| Contractor does not provide one on-site resident mechanic and one on-site resident helper | High | Change frequency of Facilities Maintenance Engineer oversight with contractor to monthly |

# Review

# 7-Step Process

1. Identify contracts to review
2. Understand requirements
3. Identify risks
4. Prioritize risks
5. Determine risk response
6. Design/execute monitoring activities
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# Reference

Guide to Financial Operations

- Section XI, Chapter 11.F Contract Monitoring

# Q&A