

Contract Submission

NYS Office of the Attorney General & NYS Office of the State Comptroller

Contract Submission OAG and OSC

- **Lorraine Remo – New York State Office of the Attorney General, Contract Approval Section Chief**
- **Benjamin Maggi – Assistant Attorney General, Contract Approval Section**
- **Bill Hughes – Invitation for Bid (IFB) Team Leader, OSC Bureau of Contracts**
- **Jim Iwaneczko – Request for Proposal (RFP) – Team Leader, OSC Bureau of Contracts**

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Agenda

- Contract Processing Highlights
 - Attorney General Review
 - OSC (IFB/RFP) Review
- Question and Answer Session

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OAG - Making Sure Key Documents Are Submitted

TRANSMITTAL LETTER

The Attorney General's Contract Approval Section cannot process documents without a transmittal, or "cover", letter. The cover letter should include the following:

- Agency letterhead;
- Date;
- Exact, full name of contractor;
- OSC contract number;
- Whether the document is an original or an amendment, extension, or renewal;
- Brief description of goods or services or other contract purpose;
- Contract amount;
- Contract term (starting and ending dates);
- Agency instructions for the forwarding of contract after approval; and
- Agency contact name, phone number, fax number, and E-mail address.

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BASIC CONTRACT REQUIREMENTS

- Signatures of all parties
- Acknowledgments for all non-state parties
- Starting and ending dates (term of contract for an original agreement or term of an amendment to the original agreement)
- Consideration. What is the dollar amount of the contract? What is the cost of the goods and/or services? Is there a cost breakdown of the items or services being funded? Is there a clear statement of goods or services or property to be provided
- The most recent version of State Appendix A, Standard Clauses for New York State Contracts, is incorporated and attached to the agreement
- All attachments and exhibits are actually attached to the contract

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BEWARE OF A CONTRACTOR'S BOILERPLATE CONTRACT AND UNACCEPTABLE CONTRACT PROVISIONS

Contractor's boilerplate. These are contracts which are drafted by the contractor. These contracts may contain contract clauses which are not beneficial to the State of New York. For example:

Contract terms which are unusual, vague, or which appear not to be in the best interest of the State of New York

Limitation of liability clauses - Contractors may not monetarily limit their liability for direct damages for personal injury, death or damage to real property, tangible personal property, or intellectual property attributable to the negligence or other tort of the Contractor, its officers, employees or agents.

Insurance – The State of New York is self-retained against risk of loss, and the agency contract normally should not contain any language in which the State is providing insurance for the benefit of the contractor.

Indemnification of the State by the Contractor - Make sure that indemnification of the State is not limited to the Contractor's gross negligence

Indemnification of the Contractor by the State. If the Contractor requests that the State of New York indemnify the Contractor the following language may be used:

“Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the State shall hold Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment.”

No binding Arbitration- this prohibition is contained in clause sixteen of State Appendix A.

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CONTRACTS REQUIRING SPECIAL CONSIDERATION

- **Sectarian Contracts.** Sectarian organizations receiving public money may be given funds only for use of a secular purpose. The primary effect of the contract cannot advance or inhibit religion, and the contract should not require excessive government entanglement with religion.
- **Outside counsel contracts in which legal services are being provided directly to the State of New York.** Contact the Attorney General's Office regarding your agency's need to retain outside counsel. There are specific requirements in the drafting and submission of outside counsel contracts. Contact the Contract Approval Section for a copy of the requirements.
- **Advertising Contracts.** If the Contract provides services for advertising verify that there is contract language which states that the funds made pursuant to the contract will not be used for any partisan political activity that may influence legislation or the election or defeat of any candidate for public office.

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IFB/RFP - Making Sure Key Documents Are Submitted

- Use audit type TBP for IFB's & TBV for RFP's.
- Verify that the vendor has a valid State Vendor ID.
- Document unique procurement developments that occurred and how they were addressed.
- Provide the following key items:
 - Price justification & reasons for limited competition if two or less bids (proposals) are received.
 - A Vendor Responsibility Profile for all new contracts and amendments.

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IFB/RFP - Making Sure Key Documents Are Submitted

- Vendor Responsibility Questionnaires (VRQ) for all transactions valued over \$100,000, and all contracts exceeding \$100,000 for the first time.
- Proof of Workers' Compensation and Disability Insurance Coverage.
- Mandatory Site Visit Sign-in Sheet.
- Contract Reporter Advertisement.
- Certified Bid tabulation.
- Rejected bids/proposals.

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IFB/RFP - Making Sure Key Documents Are Submitted

- Cost Proposals from all proposers.
- Evaluation Summary.
- Evaluator Score Sheets.
- Document any procurement or evaluation issues and the rationale for the agency approach.
- Document Debriefings and/or Protests.