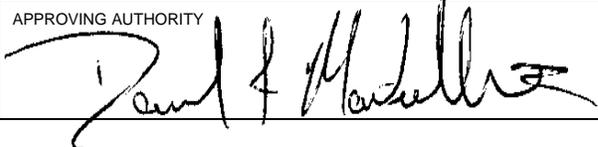


 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE <b>Contract Procurement Procedures</b>		NO. 2914
			DATE 2/5/2016
SUPERSEDES DIR #2914 Dtd. 8/12/2014	DISTRIBUTION A	PAGES PAGE 1 OF 10	DATE LAST REVISED
REFERENCES (Include but are not limited to) Article 9 of the NYS Labor Law; Prompt Contracting Law Article XI-B; Dir. #2604	APPROVING AUTHORITY 		

- I. **BACKGROUND:** This directive defines policies and procedures for contract procurement by the Department of Corrections and Community Supervision’s (DOCCS) Central Office and the Contract Procurement Unit’s resource support for correctional facilities. The directive complements the New York State’s Procurement Council’s Procurement Guidelines (Rev. 2009), described below.
- II. **POLICY:** It is the policy of the State of New York, as set forth in the above, to ensure that the State obtains services (including technology) on the basis of “best value” or in certain types of procurements, “best price,” from responsible vendors. Staff shall adhere to the provisions of this directive when initiating contract procurements, generating documentation to support contract procurement decisions, and maintaining internal controls over the contract procurement process. Staff shall follow the NYS Procurement Council’s Procurement Guidelines (Rev. 2009) for procurement methods and procedures, as well as all current New York State agency contract policies. The procurement guidelines can be accessed at the website of the Office of General Services (OGS) at: [www.ogs.ny.gov](http://www.ogs.ny.gov), through the Centralized Procurement section. Additional procurement policy guidelines are located in the State’s Guide to Financial Operations at [www.osc.state.ny.us/agencies/guide/MyWebHelp](http://www.osc.state.ny.us/agencies/guide/MyWebHelp).
- III. **DEFINITIONS**
- A. Procurement: A method to obtain goods and services that have been identified by the Department’s Central Office divisions, offices, or facilities to fulfill a specified need.
- B. Contract: As defined for this directive, is a set of documents that describe the agreement, the scope of services, the budget, plus necessary appendices, that will be needed in order to obtain said goods or services. Most contracts are subject to review and approval by the Office of the State Comptroller (OSC). The sole exception are “T” contracts which would otherwise be subject to OSC review and approval, but fall under the State’s discretionary funding threshold, permitting “T” contracts to be approved at the State Agency/Facility level.
- C. Contract Procurement Unit (CPU): Refers to a specific unit in DOCCS Central Office which is responsible for coordinating contract procurements for Central Office.

- D. Facility Contracts: For purposes of contract procurement, the following facility staff titles are defined as equivalent to the CPU titles used in this directive:

<b>CPU</b>	<b>Equivalent Facility Staff</b>
CPU Staff and Assoc. Budget Analyst	DSA, Steward, Head Account Clerk
Deputy Commissioner	Superintendent
Asst. Commissioner, Division/Office Head	Deputy Supt. (or as designated by the Superintendent)
Director of Budget & Finance	Superintendent
The Division of Budget & Finance	Facility Business Office
The Office of Counsel	Superintendent's designee

- E. Contract Administrator/Contract Manager: The person assigned by the Division/Office supervisor who has the responsibility to monitor the contractor's delivery of goods or services according to the terms defined in the contractual agreement.

**IV. CONTRACT PROCUREMENT UNIT:** The Contract Procurement Unit (CPU) is organized within the Division of Support Operations, and will administer the procurement process for all Central Office contracts, working together with the Division/Office requiring the contract. The Division/Office that requires the contract will designate a Contract Administrator who will work with the CPU from the beginning of the procurement/contract development process through the life of the contract. During the life of a contract, the CPU, with the assistance of the Office of Counsel, will be responsible for administering functions related to applicable contract renewals, extensions, amendments, or assignments with specific program or scope of service information provided by the Division/Office, as required for the contract action. The CPU will track dates and provide reminders of contract renewals and contract expirations to Divisions/Offices.

**V. CORRECTIONAL FACILITIES:** Facilities remain responsible for contracts that are traditionally procured at the local level. The facility will typically follow the same process steps to procure a contract at the local level that the CPU follows for Central Office contracts, as defined in this directive. The CPU is an informational resource for the facilities.

#### **VI. INITIATING A CENTRAL OFFICE CONTRACT PROCUREMENT**

##### A. Division/Office Requesting the Contract

1. With the assistance of the CPU, be familiar with the requirements of the Procurement Lobbying Law in regards to the restrictions on contacts during the procurement restricted period;
2. Complete Part 1 of [Form #2914A](#), "Contract Procurement Request Form," if applicable, providing as much information as possible about the proposed contract procurement;
3. Obtain executive authorization from the appropriate Deputy Commissioner or designee to pursue a contract;

4. Determine funding availability and funding source from the DOCCS Division of Budget and Finance;
5. Forward the completed request form, if utilized, to the CPU; and
6. Prepare the Scope of Work/bid specifications for the procurement.

**B. CPU Responsibilities**

1. Assigns CPU staff member who will be involved with the procurement. Confer with the Division/Office for procurement planning to address: timeline planning, determining the appropriate procurement method to be used, fiscal resources for the project, the project work scope, roles and responsibilities of the Division/Office, and any known specific requirements or limitations that will apply to the procurement (e.g., grant deadline).
2. Inform the Division/Office about the documentation and/or information required by the CPU in order to commence the procurement process; including the project's goals, the scope of work, funding details of the projects, lists of known potential bidders, any known potential Minority and Women Owned Business Enterprise (M/WBE) providers, etc.
3. The CPU and Division/Office will mutually determine dates for bidder's conferences, proposal due dates, and proposal/bid review dates, if applicable.
4. The CPU, together with applicable Department staff, will determine whether pre-review of the Request for Proposal (RFP) by OSC is necessary (e.g., new procurements that are very complex, costly, or unusual). If pre-review is needed, the CPU will contact OSC.
5. The CPU will notify the Office of Counsel and the Division of Budget and Finance of any new procurements. Both offices will be given the option to attend meetings and assist with the formulation of the RFP or Invitation for Bid (IFB). Additionally, the CPU will regularly provide both offices with status updates of procurements.
6. The CPU will develop and draft all Requests for Information (RFI) and forward to the Office of Counsel for review and approval prior to publishing.
7. The CPU, in consultation with the Office of Counsel, will develop a basic format for all procurement methods, such as the RFP and IFB methods and formats.
8. Act as the Department's repository of the official contract record, including the Department's original copy of the executed contract.

**VII. PROCURING THE CONTRACT**

**A. Procurement by RFP/IFB Methods**

1. The CPU develops the RFP/IFB document, utilizing information provided by the Division/Office and the Division of Budget and Finance, then submits the RFP or IFB to the Division/Office for review.
2. The Division of Budget and Finance will review RFPs prior to submission to the Office of Counsel. The Office of Counsel will review and approve RFPs prior to release. IFBs are reviewed by the Office of Counsel as needed.

3. The Division/Office forwards the draft RFP for review by the Assistant Commissioner, and then the Deputy Commissioner or designee for review and approval to issue the RFPs. If edits are requested as a result of the Executive review, the Division/Office will inform the CPU of needed changes.
4. The Division/Office submits written proof of final executive approval to issue the RFP to the CPU (copy of approval memo, e-mail, signature on face page of the final draft RFP, etc.).
5. The Division/Office and the Division of Budget and Finance will assist with development of the technical evaluation and cost evaluation instruments as required. These will be reviewed and approved by the CPU and the Division of Budget and Finance prior to the bid being released.
6. The CPU researches potential M/WBE providers, if applicable.
7. The CPU posts notice of the solicitation on the NYS Contract Reporter.
8. The CPU issues the RFP or IFB to potential bidders, or provides information of same. The CPU ensures that the Division/Office and any other applicable staff understand that the “restricted period” related to contracts during the procurement process, pursuant to the Procurement Lobbying Act, begins at this point and continues through approval of the contract.
9. The CPU will coordinate with the Division/Office to organize a bidder’s conference if required.
10. The CPU is responsible for tracking the receipt of all proposals/bids submitted by potential bidders and determining the procedures required for the handling of the bid opening.
11. The Division/Office is responsible for establishing a qualified review panel to review proposals/bids and arranging a room for the review to take place, unless other arrangements are made with the CPU. The Division of Budget and Finance, when appropriate, will assign a person who is knowledgeable of the program area to perform a fiscal review of the proposals received. The CPU staff assigned to the project will coordinate the review process, distribute bids, and provide direction to the reviewers. The Division/Office supplies a person who is knowledgeable of the service being procured to respond to reviewer’s programmatic questions.
12. Determine tentative contract awardee(s) (RFP- best value vs. IFB - lowest price), based on the score results. The CPU prepares the official document of the scoring results.
13. Prior to issuing notices of contract award to winning bidders, required approvals include:
  - a. RFP procurements – written approval by the applicable Deputy Commissioner.
  - b. IFB procurements – written approval by the Division/Office head.
14. With RFPs, the CPU and Division/Office mutually determine, with input of Executive staff and the Division of Budget and Finance, if indicated, whether negotiations with the vendor are needed to refine or modify details of the proposed program and/or negotiate adjustments to the budget.

15. The CPU is responsible to ensure that appropriate goals are established by/with vendors for subcontracting with certified M/WBEs pursuant to Article 15-A of the Executive Law.  
Note: If the legitimate goal is zero, this qualifies for an exemption and is outside the scope of Article 15-A.
16. The CPU consults with the Office of Counsel regarding procurement details and issues. The CPU provides information, such as the amount of the contract and contract number, to the Office of Counsel which will draft the agreement.
17. The CPU sends the contract documents to the vendor for signature, accompanied by all forms deemed necessary by New York State for contracts.
18. Upon receipt of the executed contract from the vendor, the CPU will verify all forms are accurately completed and notarized where necessary.
19. The CPU will post notice of the award on the NYS Contract Reporter.
20. The CPU prepares the complete procurement packet, obtains authorized Department signatures, then forwards the packet to the Office of the Attorney General (AG) for signature which, in turn, forwards the packet to OSC for final approval.
21. The reviews by the AG and OSC often yield requests for additional information or clarifying details. The CPU is responsible to respond to such questions, obtaining additional information from the proposed vendor or the Division/Office, as needed.
22. Upon approval of a contract, the CPU will supply a final fully executed copy of the agreement and all required appendices to the Contractor, the Division/Office, the Office of Counsel, and the Division of Budget and Finance.
23. The CPU will provide the Office of Counsel and the Division of Budget and Finance with a list of all current contracts and extensions which will include the contract number, name, term, amount, contract administrator, and contract information, and the CPU staff member assigned to the contract. The CPU will also provide the aforementioned offices with a list of all known procurements for the upcoming year, a brief description of each procurement, a status update, the Division/Office affiliated with the procurement, and any other relevant information pertaining to the procurement.

B. Discretionary ("T") Contracts

1. Discretionary contracts are funded in an amount that is under the State's published discretionary threshold. They usually are not procured through competitive process but may be at times.
2. While competitive advertising is not required for discretionary contracts, the State agency must be able to justify the choice of vendor and the reasonableness of price. In order to do so, a "best practice" approach is to obtain quotes from three to four vendors and to do independent research of various potential providers.
3. The Office of Counsel prepares the contract/agreement utilizing information provided by the CPU.

4. The CPU sends the agreement to the vendor and obtains the forms that are required by New York State for contracts.
  5. The CPU obtains approval of the contract by the Director of Budget and Finance.
  6. The CPU will post notice of the award on the NYS Contract Reporter.
  7. Upon approval of the contract, the CPU will supply a final approved copy of the agreement to the Contractor, the Division/Office, the Office of Counsel, and the Division of Budget and Finance.
- C. Single or Sole Source Contracts and Intergovernmental Agreements
1. The CPU is also responsible for procuring these contracts/agreements when the circumstances warrant such a contract.
  2. The CPU obtains prior approval for exemption from advertising from OSC, as required for single or sole source agreements.
  3. The CPU obtains all necessary information from the Division/Office or governmental entity needed for the contract/agreement.
  4. The Office of Counsel prepares the contract/agreement utilizing information provided by the CPU.
  5. The CPU sends the contract/agreement to the vendor for signature and obtains the forms that are required by New York State for contracts.
  6. The CPU obtains approval of the contract by the Director of Budget and Finance.
  7. The CPU will post notice of the award on the NYS Contract Reporter.
  8. The CPU forwards the procurement package to the AG, which in turn forwards to OSC.
  9. Upon approval of the contract, the CPU will supply a final approved copy of the agreement to the Contractor, the Division/Office, the Office of Counsel, and the Division of Budget and Finance.
- D. Capital Funded Contracts
1. Capital funded contracts are typically procured using competitive methods. (See VII-A: Procurement by RFP/IFB Methods.)
- E. Contracts for Services in Public Buildings
1. The term “public buildings” includes all NYS DOCCS correctional facilities and community supervision buildings, in addition to offices or building spaces leased or rented by the Department.
  2. Public building service contracts are agreements between the State and private enterprise to provide specific types of maintenance and security for public buildings.
  3. Building service employees include persons contracted for provision of such services as janitorial, building security, pest control, garbage or refuse removal, transportation of office furniture to or from such buildings, or similar services.
  4. Contractors that provide services including, but are not limited to the above list, must comply with prevailing wage provisions as published by the NYS Dept. of Labor (DOL) in accordance with Article 9 of the NYS Labor Law.

5. Procurement instruments for services subject to prevailing wage requirements must include the information in the solicitation and attach the appropriate wage schedule(s). Wage schedules are obtained from DOL.
6. Contracts for services subject to prevailing wage requirements must include the current rate schedule in the contract. If the contract includes renewals, wage schedules must be updated at the time of renewal.

F. Consultant Services Contracts

1. In all cases, prior written approval must be obtained from the applicable Deputy Commissioner before pursuing the use of a consultant for any service. The following information must be submitted for the Deputy Commissioner's review and approval:
  - a. The service to be procured (statement of need);
  - b. Justification for use of a consultant (why agency personnel cannot provide the service);
  - c. Whether a competitive procurement will be used, and if not, the reason is fully explained; and
  - d. Estimated cost to procure the services of a consultant.
2. Competitive procurement methods should be used whenever possible to procure consultants, including, as applicable, RFP and IFB methods, or competitive written quotes.
3. Competition can generally be relied upon for assuring reasonableness of cost.
4. Non-competitive consultant procurements require detailed information to ensure appropriate procedures were utilized, including, but not limited to:
  - a. Justification for choice of vendor;
  - b. Reasonableness of price is established (comparison to prices the vendor has charged other clients, or comparison to prices charged by other vendors for comparable services); and
  - c. A detailed budget that fully explains all charges to be incurred.

Note: If the cost to procure a consultant under the non-competitive method exceeds the State agency's discretionary threshold amount, prior approval for exemption from competitive advertising on the NYS Contract Reporter must be obtained from OSC (see VII-C: Single or Sole Source Contracts and Intergovernmental Agreements). Such approval by OSC is for exemption from competitive advertising only; it does not constitute approval of the contract.

G. Role of the Office of Counsel with Central Office Procurements

1. Participates in the development of the RFPs, as well as the IFBs and RFIs as needed. Reviews all RFPs submitted for approval prior to release.
2. Participates with the CPU and the Division/Office when negotiations with a tentative contract awardee(s) indicates the need for Office of Counsel involvement.
3. Prepares or reviews, as applicable, all original contracts and intergovernmental agreements and most amendments, renewals, and extensions including:

- a. Cover page, with contract number, term, funding, etc;
  - b. Standard and specific clauses, as indicated;
  - c. Corporate acknowledgement (signature) page; and
  - d. Consults as needed regarding attachments that are to be affixed to the contract.
4. Advises on all contract matters deemed to require review by the Office of Counsel at any time during the procurement process and continuing during the life of a contract.
  5. Provides training and assistance to Contract Manager/Administrators regarding Project Sunlight and Procurement Lobbying Law requirements.
- H. Role of the Division of Budget and Finance
1. Prior to initiation of the procurement process, the Division of Budget and Finance must review and approve all planned procurements to determine funding source and availability of funds required to secure services on behalf of the Department.
  2. The Division of Budget and Finance will take an active role in developing the budget, fiscal requirements, and the scoring tool of all Departmental RFPs. All RFPs must have the Division of Budget and Finance approval prior to being published.
  3. A representative of the Division of Budget and Finance will participate in the budgetary review of proposals submitted through the RFP process.

## VIII. FISCAL ROLE OF THE CPU DURING THE PROCUREMENT PROCESS

- A. The CPU's Associate Budgeting Analyst is responsible for duties including, but not limited to:
1. Submit and track approvals for Division Budget (DOB) ASCA B-1184 spending requests.
  2. Coordinate with the Division of Budget and Finance to verify anticipated contract funding.
  3. Prepare and input contracts on the State Financial System (SFS).
  4. Monitor contract encumbrances in SFS.
  5. Manage all SFS functions related to contract procurement and subsequent contract actions (renewals, extensions, amendments, etc.) and work in consultation with the Division of Budget and Finance to ensure funding is being properly utilized.
  6. Track activity of all pending contracts and advise CPU staff of approvals.
  7. Track date and timeline information for grant contracts pursuant to the Prompt Contracting Law Article XI-B.
  8. Review contract expenditures on a quarterly schedule and coordinate with Contract Administrators and the Division of Budget and Finance on contract expenditure issues (e.g., overspending, timelines of invoice submission, etc.).

9. Assist in the review of contract budgets as well as requests for budget modifications, price increases, or other budget actions, as needed and in consultation with the Division of Budget and Finance.
10. The Associate Budgeting Analyst will have an essential role with the NYS Contract System database. Duties will include, but are not limited to, review and confirm vendor data input by SFS, enter M/WBE goals for each contract, receive system notices regarding payment actions, and notify Contract Manager/Administrator when the system reports a deficiency or needed action.

## IX. AFTER CONTRACT APPROVAL

### A. Role of the CPU

1. Provide a complete, fully executed signed copy of a contract to the contractor, Division/Office, Counsel's Office, and Budget and Finance.
2. When transmitting the approved contract to the vendor, provide notice regarding the procedure to remit payment claims to either the Office of General Services (OGS) Business Service Center (BSC) or to DOCCS, according to DOCCS guidelines.

Note: Facility Contracts: Payment claims should be directed to the facility Business Office.

3. Retain a copy of the detailed procurement record, including the bidding documents, bid results, mandatory forms, and correspondence with OSC during the procurement process, up to the point of contract approval.
4. Work with the Office of Counsel and the Division/Office in the event that there is an issue concerning the contract that the Division/Office does not know how to handle or needs assistance with.
5. Assist the Division/Office with extensions, renewals, and amendments, in consultation with the Office of Counsel.
6. Retain a copy of all RFPs/IFBs, contracts, attachments, and correspondence for the duration of the contract. Once the contract has expired, CPU will store aforementioned documents for a period of time deemed necessary by State Administrative Archives and Records Administration (SARA) Guidelines: General Retention and Disposition Schedule, and DOCCS Policy.

### B. Role of the Division/Office – Contract Monitoring and Fiscal Responsibilities

1. Contract Monitoring
  - a. The Division/Office will maintain a copy of the approved contract and any subsequent renewals, amendments, assignments, etc;
  - b. Designate a Contract Manager/Administrator as the primary person in the Division/Office responsible for monitoring the contractor's services, overall performance in the delivery of services, and compliance with the terms and conditions of the contract. This includes monitoring compliance toward M/WBE goal achievements, and monitoring to ensure vendor submission of quarterly M/WBE reports (refer to Directive #2604, "Minority & Women Owned Business Enterprise");

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- c. Determine the frequency of on-site visits by the Contract Manager, as well as the scope and focus of site reviews, necessary to adequately monitor the contractor's performance;
  - d. Prepare written reports of such site reviews and retain a copy in the contract file located in the Division/Office; and
  - e. Maintain a record of reports submitted by contractors, pursuant to contract requirements, in addition to relevant e-mails or other correspondence.
2. Fiscal Responsibilities
    - a. Designate a Division/Office person who has signature authority to approve vouchers or invoices from the contractor, typically the Division/Office Director, or Assistant Director, or equivalent;
    - b. Review all fiscal claims for services provided under the contractual agreements for accuracy and compliance with the terms of the contract. Notify the Division of Budget and Finance of approval to pay;
    - c. M/WBE monitoring shall be conducted by the Contract Manager/Administrator as needed, but no less than quarterly. The monitoring includes obtaining and reporting information from the vendor regarding their usage of M/WBEs and achievement toward the M/WBE goals established in the contract;
    - d. Notify the CPU of any changes which might require a contract modification to include assignments, budget modifications, early termination, etc.; and
    - e. Review all budget renewals and modifications submitted by the contractor for accuracy and compliance with terms of the contracts. After Division/Office review and approval, submit budget renewal and modification documents to the CPU and/or the Division of Budget and Finance for final approval.
- C. Role of the Division of Budget and Finance
1. Provide coding to the Associate Budgeting Analyst assigned to the CPU for the processing of contracts in the SFS.
  2. Ensure fund availability to support the Department's contracts through the process of budget journals in the SFS.
  3. On a program by program basis, determining whether staff involvement in reviewing requests for budget modifications and budget renewals is necessary.
  4. Enter contract releases on SFS.
  5. Track expenditures against the contracts as necessary.