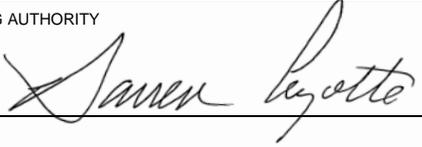


 Corrections and Community Supervision DIRECTIVE	TITLE		NO. 2914
	Contract Procurement, Monitoring, and Fiscal Responsibilities		DATE 02/09/2024
SUPERSEDES DIR #2914 Dtd. 09/19/22	DISTRIBUTION A	PAGES PAGE 1 OF 12	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section III	APPROVING 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 (NYS) Procurement Guidelines, described below.
- II. **POLICY:** It is the policy of the State of New York 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 Guidelines for procurement methods and procedures, as well as all current NYS agency contract policies. The NYS Procurement Guidelines can be accessed via the Office of General Services’ [NYS Procurement Council](#) website by scrolling down the page. Additional procurement policy guidelines are located in the [NYS Guide to Financial Operations](#).
- III. **REFERENCES**
- NYS Labor Law, Article 9
 - NYS Finance Law
 - Procurement Lobbying Law
 - Prompt Contracting Law, Article XI-B
 - Executive Law, Articles 15-A and 17-B
 - Veterans’ Services Law, Article 3
 - Directives #2604M, #2604S
 - NYS Guide to Financial Operations
 - NYS Procurement Guidelines
 - State Archives and Records Administration (SARA) Guidelines
- IV. **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.
- Contract:** As defined for this directive, a set of documents that describes the agreement, the scope of services, the budget, and 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 agency/facility level.

- B. Contract Procurement Unit (CPU): Refers to a specific unit in DOCCS Central Office which is responsible for coordinating contract procurements for Central Office.
- C. Program Area: Division/Unit/Office with functional oversight and subject matter expertise related to the contract procurement.
- 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:

CPU	Equivalent Facility Staff
CPU Staff and Associate Budget Analyst	DSA, Steward, Head Account Clerk
Deputy Commissioner	Superintendent
Assistant Commissioner, Division/Office Head (Program Area making the request for goods or service)	Deputy Superintendent (or as designated by the Superintendent)
Director of Budget & Finance	Superintendent
The Division of Budget & Finance	Facility Business Office
Counsel’s Office	Superintendent’s designee

- E. Contract Administrator/Contract Manager: The person assigned by the Program Area supervisor who is responsible, or the liaison, for all the related business decisions (i.e., Is the product/service really necessary? Is the price justified?) throughout the procurement process and throughout the life of the contract. Upon award, they also have the responsibility to monitor the contractor’s delivery of goods or services according to the terms defined in the contractual agreement.

NOTE: Should the Contract Administrator/Contract Manager leave their current position, the Executive/Program Area *must* assign a new person to take over this role and communicate this to CPU.

- F. Scope of Work: A detailed written description of the conceptual requirements for a procurement contained in a procurement document that is needed by the Program Area and becomes the basis of the procurement.

NOTE: The scope of work **may not** be compiled by a vendor. Information received in a Request for Information (RFI) may be used to assist the Program Area in drafting the scope of work, but significant portions of any vendor response cannot be taken directly from their submissions.

- V. CONTRACT PROCUREMENT UNIT (CPU):** CPU is aligned within the Division of Support Operations and administers the procurement process for all Central Office and DOCCS centralized contracts, working together with the Program Area that requires a contract to procure necessary goods or services. The Program Area that requires the contract will designate a Contract Administrator who will work with CPU from the beginning of the procurement/contract development process, and monitor performance, through the life of the contract. During the life of a contract, CPU, with the assistance of Counsel's Office, 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 Program Area, as required for the contract action. CPU will track dates and provide reminders of contract renewals and contract expirations to the Program Areas.
- VI. 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 CPU follows for Central Office contracts, as defined in this directive. CPU is an informational resource for the facilities.
- VII. INITIATING A CENTRAL OFFICE CONTRACT PROCUREMENT (Use of Form #2914A, "Contract Procurement Request Form," and Form #2914B, "Contract Procurement Checklist Program Area [Requesting Office]")**
- A. Program Area Requesting the Contract Shall:
1. Complete Part 1 of Form #2914A as applicable, providing as much information as possible about the proposed contract procurement.
 2. Obtain Executive authorization from the appropriate Deputy Commissioner or designee to pursue a contract.
 3. Obtain approval for funding from the DOCCS Division of Budget and Finance (approval from NYS Division of Budget [DOB] may also be required via the B-1184 process).
 4. Forward the completed Form #2914A to CPU.
 5. Prepare the scope of work/bid specifications for the procurement.
 6. Be familiar with the requirements of the Procurement Lobbying Law in regard to the restrictions on contacts during the procurement restricted period¹ (consult with CPU or Counsel's Office if assistance is necessary).
 7. Initiate Form #2914B, complete the "For Program Area" section, and submit it to CPU along with the completed Form #2914A.
 8. In the event that a sole/single source is being sought pursuant to subsection VIII-C, the Program Area must ensure that they have a back-up plan in place in the event that OSC fails to approve the single/sole source OR the vendor and DOCCS cannot agree on contract terms.

¹ Should an impermissible contact occur during the restricted period, an investigation should be referred to the Office of Special Investigations (OSI) pursuant to State Finance Law § 139-j 9 and 10.

- B. CPU Responsibilities (Use of Form #2914C, "Contract Procurement Checklist – Contract Procurement Unit [CPU]")
1. Assign a CPU staff member who will be involved with the procurement.
 2. Confer with the Program Area for procurement planning to address:
 - a. Determination of the appropriate procurement method for compliance with State Finance Law (e.g., preferred source or statewide contract availability, Request for Proposal [RFP] or Invitation for Bid [IFB], etc.).
 - b. Timeline planning needed for implementation.
 - c. Fiscal resources/availability for the procurement.
 - d. The procurement scope of work, roles, and responsibilities of the Program Area.
 - e. Any known specific requirements or limitations that will apply to the procurement (e.g., grant deadline).
 3. The CPU Minorities and Women-Owned Business Enterprise (MWBE) - Service-Disabled Veteran-Owned Business (SDVOB) Team will provide lists of any known potential MWBE - SDVOB providers for consideration (see also Directive #2604M, "Minority & Women-Owned Business Enterprise," and Directive #2604S, "Service-Disabled Veteran-Owned Business").
 4. Inform the Program Area about the documentation and/or information required by CPU in order to commence the procurement process, including the procurement goals, the scope of work, funding details of the procurement, lists of known potential bidders, any known potential MWBE providers, SDVOB providers, etc.
 5. CPU and the Program Area will mutually determine dates for bidder's conferences, site visits, proposal due dates, and proposal/bid review dates, if applicable.
 6. CPU, together with applicable Department staff, will determine whether pre-review of the RFP or IFB by OSC is necessary (e.g., new procurements that are very complex, costly, or unusual). If pre-review is needed, CPU will contact OSC.
 7. Consistent with Form #2914A, CPU will check with the Division of Budget and Finance as necessary to ensure funding is available.
 8. CPU, in consultation with Counsel's Office, will develop a basic format for all procurement methods, such as the RFP and IFB methods and formats.
 9. Act as the Department's repository of the official contract record, including the Department's original and/or electronic copy of the executed contract.
 10. CPU will periodically provide Counsel's Office and the Division of Budget and Finance with a listing of all current contracts, provide both offices with the opportunity to attend meetings or assist with IFB or RFP development as deemed necessary, and provide status updates upon request.

VIII. CONTRACT PROCUREMENT

A. Procurement by RFP/IFB/Request for Application (RFA) (Grant) Methods

1. CPU incorporates the information provided by the Program Area and the Division of Budget and Finance into a draft RFP/IFB/RFA document. CPU then submits the RFP/IFB/RFA to the Program Area for review.
2. Counsel's Office reviews and approves RFPs/IFBs/RFAs prior to release, as needed.
3. The Program Area forwards the draft RFP/IFB/RFA to the Assistant Commissioner for review, and then the Deputy Commissioner, or designee, for review and approval to issue the RFPs/IFBs/RFAs. If edits are requested as a result of the Executive review, the Program Area will inform CPU of the needed changes.
4. The Program Area submits to CPU written proof of final Executive approval to issue the RFP/IFB/RFA (e.g., copy of approval memo, email, signature on face page of the final draft RFP/IFB/RFA, etc.).
5. The Program Area and the Division of Budget and Finance assist with the development of the technical evaluation and cost evaluation instruments as required. These will be reviewed and approved by CPU and the Division of Budget and Finance prior to the bid being released.
6. CPU researches potential MWBE and SDVOB providers, if applicable.
7. CPU posts notice of the solicitation on the NYS Contract Reporter and DOCCS' website, if applicable.
8. CPU issues the RFP/IFB/RFA to potential bidders or provides information of same. CPU ensures that the Program Area 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. CPU coordinates with the Program Area to organize a bidder's conference if required.
10. 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 Program Area is responsible for establishing a qualified review panel to review proposals/bids, if applicable, and arranges for the review to take place (unless other arrangements are made with CPU). The Division of Budget and Finance, when appropriate, assigns a person who is knowledgeable of the Program Area to perform a fiscal review of the proposals received. CPU staff assigned to the procurement coordinate the review process, distribute bids, and provide direction to the review panel(s).
12. CPU compiles the scoring results and determines the tentative contract awardee(s) based on best value (RFP) or lowest price (IFB) of the responsible and responsive bidder(s). CPU prepares the official document of the scoring results, if applicable.

13. Prior to issuing notices of the 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 Program Area head.
14. CPU and the Program Area mutually determine, with input from 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 contract and/or negotiate adjustments to the budget.
15. CPU is responsible to ensure that appropriate goals are established by/with vendors for subcontracting with certified MWBEs pursuant to Article 15-A of the Executive Law.
16. CPU is responsible to ensure that appropriate goals are established by/with vendors for subcontracting with certified SDVOBs pursuant to Article 3 of the Veterans' Services Law.
17. CPU drafts the initial contract and Counsel's Office assists with the contract and vendor negotiations on an as-needed basis.

NOTE: Any statewide DOCCS procurement and contract totaling 1.5 million or more **must** be reviewed by Counsel's Office.
18. CPU sends the contract documents to the vendor for signature, accompanied by all forms deemed necessary by NYS for contracts.
19. Upon receipt of the executed contract from the vendor, CPU verifies all forms are accurately completed and notarized where necessary.
20. CPU prepares the complete procurement package, obtains authorized Department signatures, then forwards the contract to the Office of the Attorney General (OAG) for approval (if applicable). CPU submits the procurement package to OSC for final contract approval.
21. The reviews by OAG and OSC often yield requests for additional information or clarifying details. CPU responds to such questions, obtaining additional information from the proposed vendor, Counsel's Office, or the Program Area, as needed.
22. Upon approval of a contract, CPU supplies a final fully executed copy of the agreement and all required appendices to the contractor, the Program Area, Counsel's Office, and the Division of Budget and Finance.
23. CPU posts notice of the contract award on the NYS Contract Reporter.

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 a formal competitive process but may be at times.
2. While competitive advertising is not required for discretionary contracts, the 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. CPU drafts the initial contract/agreement utilizing information provided by the Program Area. Counsel's Office, if needed, assists with any changes to the agreement that are requested by CPU or the vendor.
 4. CPU sends the agreement to the vendor and obtains the forms that are required by NYS for contracts.
 5. CPU obtains approval of the contract by the Director of Budget and Finance.
 6. Upon approval of the contract, CPU supplies a final approved copy of the agreement to the contractor, the Program Area, Counsel's Office, and the Division of Budget and Finance.
 7. CPU posts notice of the award on the NYS Contract Reporter, if applicable.
- C. Single or Sole Source Contracts and Intergovernmental Agreements
1. The Program Area must request the appropriate Contract Reporter Exemption Request (CRER) form from CPU and, upon completion, submit it to CPU for processing. CPU is available to assist if necessary.
 2. CPU obtains prior approval for exemption from advertising from OSC, as required for single or sole source agreements.
 3. CPU obtains all necessary information from the Program Area or governmental entity needed for the contract/agreement.
 4. CPU drafts the initial contract/agreement utilizing information provided by the Program Area. Counsel's Office, if needed, assists with any changes to the agreement that are requested by CPU or the vendor.
 5. CPU sends the contract/agreement to the vendor for signature and obtains the forms that are required by NYS for contracts.
 6. CPU obtains approval of the contract by the Director of Budget and Finance.
 7. CPU forwards the contract to OAG for approval (if applicable). CPU submits the procurement package to OSC for final contract approval.
 8. Upon approval of the contract, CPU supplies a final approved copy of the agreement to the contractor, the appropriate Program Area, Counsel's Office, and the Division of Budget and Finance.
 9. CPU posts notice of the award on the NYS Contract Reporter.
- D. Capital Funded Contracts: Capital funded contracts are typically procured using competitive methods (see subsection VIII-A).
- 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 Department of Labor 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 Prevailing Rate Case (PRC) number. Wage schedules and case numbers are obtained from the NYS Department of Labor.
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
 - d. Estimated cost to procure the services of a consultant
2. Competitive procurement methods should be used whenever possible to procure consultants, including, but not limited to, RFP and IFB methods, or competitive written quotes, as applicable.
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).
 - 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 Agency's discretionary threshold amount, prior approval for exemption from competitive advertising on the NYS Contract Reporter must be obtained from OSC (see subsection VIII-C). Such approval by OSC is for exemption from competitive advertising only; it does not constitute approval of the contract.

G. Role of Counsel's Office with Central Office Procurements

1. Participate in the development of the RFPs, as well as the IFBs and RFIs, as needed. Review all RFPs submitted for approval prior to release.
2. Participate with CPU and the Program Area when negotiations with a tentative contract awardee(s) indicate the need for Counsel's Office involvement.
3. Prepare or review, as applicable, all original contracts and intergovernmental agreements and most amendments, renewals, and extensions including:
 - a. Standard and specific clauses, as indicated.
 - b. Corporate acknowledgement (signature) page.
 - c. Consults, as needed, regarding attachments that are to be affixed to the contract.
4. Advise on all contract matters deemed to require review by Counsel's Office at any time during the procurement process and continuing during the life of a contract.
5. Provide training and assistance to the Contract Managers/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 (must be documented on Form #2914A prior to submission to CPU) 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's 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.

IX. FISCAL ROLE OF CPU DURING THE PROCUREMENT PROCESS

- A. CPU's Associate Budgeting Analyst is responsible for duties including, but not limited to:
1. Submit and track approvals for the NYS DOB Agency Spending Controls Application (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 Statewide Financial System (SFS).
 4. 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, as applicable.
 5. Track activity of all pending contracts and advise CPU staff of approvals.
 6. Ensure contracts are locked in on ny.newnycontracts.com when they are imported into the NYS Contract System from SFS.

7. Track date and timeline information for grant contracts pursuant to Article XI-B of the Prompt Contracting Law.
8. 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.
9. Oversight of the Agency's program compliance with MWBE and SDVOB and tracking of the Agency's MWBE and SDVOB goal compliance efforts. Responsibilities also include the management and training of DOCCS' use of the New York State Contract System for MWBE utilization on Agency contracts.

X. AFTER CONTRACT APPROVAL

A. Role of the Contract Procurement Unit (CPU)

1. Provide a complete, fully executed signed copy of a contract to the contractor, Program Area, Counsel's Office, and the Division of Budget and Finance.
2. 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.
3. Work with Counsel's Office and the Program Area in the event that there is an issue concerning the contract that the Program Area does not know how to handle or needs assistance with.
4. Assist the Program Area with extensions, renewals, and amendments, in consultation with Counsel's Office.
5. 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 the State Archives and Records Administration (SARA) Guidelines: General Retention and Disposition Schedule, and DOCCS policy.

B. Role of the Program Area with Contract Monitoring and Fiscal Responsibilities

1. Contract Monitoring
 - a. The Program Area 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 Program Area 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 MWBE and SDVOB goal achievements and monitoring to ensure vendor submission of monthly or quarterly reports (refer to Directive #2604M and Directive 2604S).
 - c. Determine the frequency of on-site visits by the Contract Manager/Administrator, as well as the scope and focus of site or performance reviews, necessary to adequately monitor the contractor's performance as per the contract terms.

- d. Prepare written reports of such site/performance reviews and retain a copy in the contract file located in the Program Area.
 - e. Maintain a record of reports submitted by contractors, pursuant to contract requirements, in addition to relevant emails or other correspondence.
2. Fiscal Responsibilities
- a. Designate a Program Area staff person who has signature authority to approve vouchers or invoices/claims from the contractor, typically the Program Area Director, Assistant Director, or equivalent.
 - b. Review all fiscal vouchers/invoices/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. MWBE 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 MWBEs and achievement toward the MWBE goals established in the contract.
 - d. Notify CPU of any changes which might require a contract modification to include assignments, budget modifications, early termination (see subsection X-B-3), etc.
 - e. Review all budget renewals and modifications submitted by the contractor for accuracy and compliance with terms of the contracts. After Program Area review and approval, submit budget renewal and modification documents to CPU and/or the Division of Budget and Finance for final approval.
 - f. Review contract expenditures on a regular basis (i.e., quarterly schedule) and coordinate with Contract Managers/Administrators and the Division of Budget and Finance on contract expenditure issues (e.g., overspending, timelines of invoice submission, etc.).
3. Contract Termination
- a. The Program Area must review the agreement to determine if it appears ok to terminate.
 - b. If initiated by the vendor, the Program Area needs to discuss if they would like to mutually agree to the termination and how they will be able to obtain the good or service until a new vendor may be properly procured.
 - c. If initiated by the Program Area, they will need to determine if they would like to terminate for cause or for convenience.
 - d. The Program Area should set up a meeting with CPU, the Division of Budget and Finance, and Counsel's Office to discuss.
 - e. The Program Area should draft the letter regarding the termination (with the sample provided by CPU from prior terminations).
 - f. The letter must be signed by the Director of the Division of Budget and Finance and sent in accordance with the contract terms by the Program Area with a copy to CPU, Counsel's Office, and the Division of Budget and Finance.

C. Role of the Division of Budget and Finance

1. Provide coding to the Associate Budgeting Analyst assigned to CPU for the processing of contracts in SFS.
2. Ensure fund availability to support the Department's contracts through the process of budget journals in SFS.
3. On a contract-by-contract basis, determine whether Program Area staff involvement in reviewing requests for budget modifications and budget renewals is necessary.
4. Enter contract releases in SFS.
5. Track expenditures against the contracts as necessary.