§ 140. Legislative findings and declaration. The legislature hereby finds and declares that it is the policy of the state to conserve and protect state revenues through the efficient and prudent use of state funds in state procurement contracts. It further finds that the operation of an efficient procurement information system is an effective tool in the economic development of the state. To promote this policy, it is in the best interest of the state to create a central information source that will alert businesses to new opportunities to participate in state procurement activities. To accomplish these public purposes, public notice of state procurement contracts shall be given by regular publication of a compilation of the state’s needs for goods and services.
§ 141. Definitions. For the purposes of this article, the following terms shall have the following meanings as indicated:

1. "Agency" shall mean any agency, department, board, bureau, commission a majority of whose members are appointed by the governor, division, office, council, committee, or officer of the state, or the state university of New York or the city university of New York, or any public benefit corporation or public authority, a majority of whose members are appointed by the governor. Such term shall not include the legislature.

2. "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which had offered for sale, lease or other form of exchange, goods sought by the agency and substantially produced outside of New York state, or services sought by the agency and substantially performed outside New York state.

3. "Procurement contract" shall mean any written agreement entered into by an agency for the acquisition of goods, services, or construction of any kind in the actual or estimated amount of fifteen thousand dollars or more. The term does not include an agreement for employment in the civil service.
§ 142. Procurement opportunities newsletter. 1. The commissioner shall publish on a daily basis a procurement opportunities newsletter, which shall contain notices of procurement contract opportunities and any other information the commissioner deems necessary to effectuate the purposes of this article. Notices of procurement contract opportunities shall be available on the internet for at least fifteen days.

2. Notices of procurement contract opportunities shall mean:
   (a) for procurement contracts to be awarded by the office of general services, (i) a description of the centralized commodity contracting program of such office and an explanation of how to apply for placement on any prequalified bidders list established as part of such program; (ii) a description of the centralized construction contracting program of such office and an explanation of how to subscribe to any bid notice publication established as part of such program; and (iii) for all other procurement contracts awarded by the office, the provisions of paragraph (c) of this subdivision shall apply.
   (b) for procurement contracts in excess of ten thousand dollars and less than twenty thousand dollars to be awarded by the state university of New York or the city university of New York, (i) a quarterly listing of projected procurement purchases by commodity for each institution of the state university of New York or the city university of New York; (ii) an explanation of how to apply for placement on any bidder lists maintained by the state university of New York or the city university of New York; and (iii) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by the state university or the city university; and
   (c) for all other procurement contracts issued by agencies (i) the name of the contracting agency; (ii) the contract identification number; (iii) a brief description of the goods or services sought, the location where goods are to be delivered or services provided and the contract term; (iv) the address where bids or proposals are to be submitted; (v) the date when bids or proposals are due; (vi) a description of any eligibility or qualification requirement or preference; (vii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (viii) any other information deemed useful to potential contractors; (ix) the name, address, and telephone number of the person to be contacted for additional information; and (x) a statement as to whether the goods or services sought had in the immediately preceding three year period been supplied by a foreign business enterprise.

3. The commissioner shall provide for electronic publication, updated daily, accessible at no charge to the general public and may set subscription rates for enhanced access services, including, but not limited to, automated notification of bid opportunities based upon the amounts estimated to be necessary to defray the expenses of preparing, publishing, marketing and distributing the procurement opportunities newsletter. In addition, the commissioner shall immediately make available, upon request, a printed copy of all notices from the date of such request and the fifteen days preceding, and if requested, make available on a weekly basis, the procurement opportunities newsletter, at a subscription rate determined by the commissioner based upon an estimated expense of producing and distributing such printed copy.

4. The commissioner may publish in the procurement opportunities newsletter (a) notices of procurement opportunities originating from political subdivisions of the state or business enterprises, and (b) notices from government or potential government contractors seeking
subcontractors and suppliers, in such form and manner as the commissioner shall determine. The commissioner may charge a fee for the publication of such notices of procurement opportunities based upon the amounts estimated to be necessary to defray the expenses of preparing, publishing, marketing and distributing such additional notices of procurement opportunities.

5. In addition to any other notice of procurement contract opportunities required in this section, for procurement contracts in the amount of two hundred thousand dollars or more to be awarded by all state agencies, each agency shall prepare for inclusion in the procurement opportunities newsletter (a) a semi-annual listing of projected procurement purchases by category; (b) an explanation of how to apply for placement on any bidder list maintained by the agency; and (c) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by the agency. The commissioner, in consultation with each agency, shall arrange a schedule for each agency's semi-annual listing.

6. The commissioner shall include in the procurement opportunities newsletter the procurement contract award information submitted by agencies pursuant to subdivision three of section one hundred forty-three of this article.
§ 143. Responsibilities of other agencies. 1. Prior to awarding any procurement contract, each agency shall submit to the commissioner information sufficient to enable publication of the notices of procurement contract opportunities described in subdivision two of section one hundred forty-two of this article. Such information shall be submitted to the commissioner in sufficient time to allow a minimum of fifteen business days between publication of such notice and the date on which a bid or proposal is due, except where a shorter period is specifically authorized by law.

2. No agency shall award a procurement contract unless a notice of a procurement contract opportunity as described in subdivision two of section one hundred forty-two of this article has been published in the procurement opportunities newsletter or unless such procurement contract is exempt from the requirements of this article in accordance with section one hundred forty-four of this article.

3. At the time the agency determination of intent to award a procurement contract is made, each agency shall submit to the commissioner for inclusion in the procurement opportunities newsletter, (a) for procurement contracts let by the invitation for bid process, the result of the bid opening including the names of bidding firms and the amounts bid by each; (b) for procurement contracts let by the request for proposal process, the names of firms submitting proposals and the proposal selected as the best value offer; and (c) for all other procurement contracts, the name of the proposed awardee.
§ 144. Exemptions. 1. The provisions of this article shall not apply to:

(a) Procurement contracts, which the comptroller exempts pursuant to the procedures contained in subdivision two of this section, awarded on an emergency or critical basis, or on the basis that publication is not feasible, provided, however, that no exemption shall be granted for any contracts, except for contracts awarded on an emergency or critical basis, for which competitive bidding is required by law;

(b) Procurement contracts being re-bid or re-solicited for substantially the same goods or services, within forty-five business days after the date bids or proposals were originally due;

(c) Procurement contracts awarded pursuant to section one hundred seventy-five, one hundred seventy-five-a, one hundred seventy-five-b or one hundred seventy-five-c of the state finance law;

(d) Procurement contracts in an amount less than ten thousand dollars awarded by the state university of New York or the city university of New York; and

(e) Procurement contracts awarded to not-for-profit providers of human services pursuant to a non-competitive selection process.

2. Any exemption requested for a procurement contract described in paragraph (a) of subdivision one of this section may be granted in accordance with the following procedure:

(a) Any agency, which shall not include those public benefit corporations or public authorities whose contracts and payments are not approved and pre-audited by the comptroller, may request an exemption from the comptroller. The request shall, unless an emergency exists, be in writing and state the nature of the contract and reasons for the exemption. The comptroller may accept an oral request for an exemption in an emergency, provided the agency agrees to submit to the comptroller a written request immediately thereafter.

(b) The comptroller shall, as soon as practicable, determine whether an agency's request for an exemption is granted or denied. The comptroller may inform an agency of the decision orally and shall provide an agency with a written determination granting or denying the request for an exemption.

(c) The comptroller shall be responsible for granting or denying an exemption for each individual procurement contract unless the comptroller determines, by regulation, that a specific class of procurement contracts should be exempt.

(d) The comptroller shall, after consultation with the commissioner, promulgate regulations or guidelines to implement the provisions of this subdivision.

(e) Notwithstanding the foregoing, any agency receiving an exemption for a procurement contract in accordance with this subdivision must nevertheless publish notice of either the letting or award of the contract, and the reasons for any such exemption, in the procurement opportunities newsletter as soon as practicable, unless the comptroller determines that publication would affect the ability of (i) law enforcement agencies to carry out investigations, or (ii) agencies to protect security operations, in which case notice of such contract shall not be published.
§ 145. Study and report. The state procurement council established pursuant to section one hundred sixty-one of the state finance law, in consultation with the council on contracting agencies established pursuant to executive order 4.125 dated May twenty-second, nineteen hundred eighty-nine, shall study and report by September first, two thousand nine to the governor, the legislature and the director of the budget with recommendations on implementation of a statewide electronic procurement opportunity notification system, including, but not limited to:

1. plans and a timetable for further integration of existing agency systems of bidder registration and procurement opportunity notification with the procurement opportunities newsletter established pursuant to this article;
2. electronic submission of bids and proposals; auctions and reverse auctions; electronic availability of plans and specifications;
3. feasibility of using open standards software applications for a statewide electronic procurement opportunity notification system;
4. costs and funding models for a statewide electronic procurement opportunity notification system;
5. additional information to be included to increase the transparency and utility of the system, including without limitation, notices by the comptroller of progress payments made to prime contractors, and minority and women-owned business enterprises utilization plans and waivers granted pursuant to article fifteen-A of the executive law.
§ 146. Approval of comptroller. The comptroller shall not approve or file any procurement contract for the acquisition of goods or services in the amount of fifteen thousand dollars or more unless notice as provided in section one hundred forty-two of this article shall first have been published in the procurement opportunities newsletter at least fifteen business days prior to the date on which a bid or proposal was due. Provided, however, such requirement of publication of advance notice shall not apply to contracts exempt from such requirement under section one hundred forty-four of this article; provided further, that the comptroller shall not be required to disapprove a contract if he determines that there has been substantial compliance with the requirements of section one hundred forty-two and section one hundred forty-three of this article. The foregoing provisions of this section shall not be construed to limit, in any manner, the right of the comptroller to demand evidence of adequate competition or such other proofs as he may require in the discharge of his responsibilities pursuant to section one hundred twelve of the state finance law or any other provision of law.